

1 (Proceedings at 10:08 a.m. Defendant Harris not
2 present. Jury not present.)

3 THE COURT: I trust we're ready to proceed.

4 MR. HARDING: Yes, Your Honor. Mr. Hanlon is just
5 taking care of a few exhibits. But we're fine with going ahead
6 without him. He'll be down here in a few minutes, anyway.

7 THE COURT: All right.

8 MR. HARDING: Your Honor, if I could put on the record,
9 I think defense counsel and the government are in agreement that
10 everything on the trial cart is in evidence. Except I see
11 there's some volumes of the Federal Code on the bottom shelf
12 there.

13 THE COURT: We don't want to send those in. Do they
14 belong to you?

15 MR. HARDING: No.

16 THE COURT: What are they? The Westlaw?

17 THE CLERK: Loaned them the cart, so after the exhibits
18 are put on another cart, then we'll put them all back on one
19 cart.

20 THE COURT: No. No. I think you misunderstand. Mr.
21 Harding is simply pointing out that there are law books on the
22 cart.

23 MS. RHODES: They're not consolidated on to the proper
24 cart yet. That's all. It's just Belinda's cart. It will be,
25 when they go in, it will be all on one cart without books.

1 THE COURT: Well, let's do that now.

2 MS. RHODES: Your Honor, there were about four photos
3 that were missing. That's what Mr. Hanlon is looking for now.

4 THE COURT: Would that be the missing photo arrays or
5 just --

6 MS. RHODES: No. I think one was a photo array. The
7 other were just, they're all from the Spence.

8 THE COURT: I see. Mr. Kurland, good morning. Are you
9 satisfied that the state exhibit tags have been sufficiently
10 obscured?

11 MR. KURLAND: Yes, Your Honor. Mr. Hanlon did a very
12 good job with respect to that. I appreciate that. And we also
13 were able to find that other letter, and the government, and it
14 was sufficiently redacted to the point where we're satisfied that
15 it's --

16 THE COURT: Great. Thank you.

17 MR. KURLAND: Appreciate that, Judge.

18 MR. HARDING: Mr. Flannery is reviewing it.

19 THE COURT: What's the hold-up?

20 MR. FLANNERY: I'm sorry, Your Honor. This is the
21 Rodney Hayes redactions. And I don't think we have the right
22 copy yet. Sorry. Just take a moment.

23 MR. HARDING: Judge, I think we can proceed. But I'm
24 going to have to get somebody to make some additional redactions
25 on a couple of pages on the Rodney Hayes's transcripts.

1 THE COURT: What needs to come off?

2 MR. HARDING: The part about, you remember, there were
3 some discussions on the transcript about how Bo used Mr. Shelton
4 to beat up inmates at Hickey School.

5 THE COURT: Right.

6 MR. HARDING: Mr. Lawlor flagged a number of things to
7 be deleted but he didn't flag this. And I apparently --

8 THE COURT: So where do we stand, Mr. Harding, on the
9 Hayes transcript?

10 MR. HARDING: I just have to get two more pages
11 redacted.

12 THE COURT: How have you done the redactions?

13 MR. HARDING: By --

14 THE COURT: White Out or what?

15 MR. HARDING: By holding a piece of paper over the
16 redacted section when photocopying, yes.

17 THE COURT: When it's photocopied? All right. Do you
18 have some tape and scissors? My law clerk can go make copies
19 pretty quickly.

20 MR. HARDING: Those sections that are marked. Thank
21 you very much.

22 THE COURT: Have we given Ms. Martinez have all of the
23 page that need to be re-photocopied?

24 MR. HARDING: I'm sorry, Your Honor.

25 THE COURT: Does Ms. Martinez have all of the pages

1 that need to be re-photocopied?

2 MR. HARDING: Yes.

3 THE COURT: Okay. Mr. Flannery, still reviewing the
4 other Hayes's transcript?

5 MR. FLANNERY: Just take a minute, Your Honor.

6 THE COURT: All right. Let the record reflect that,
7 once again, Deputy Marshal Akers has confirmed for me that
8 yesterday and this morning the remote transmission to Mr. Harris
9 in the cell block is working just fine. And Mr. Harris is
10 enjoying his solitude, apparently.

11 MR. MARTIN: Your Honor, my silence should not mean
12 that I don't still object to this.

13 THE COURT: Absolutely, Mr. Martin.

14 Okay. What about the placards? You're going to send
15 them in, also, correct? The poster boards?

16 MR. HARDING: Yes.

17 THE COURT: All of them are marked. Okay. They're
18 fine over there. We'll just remember to send those in. And
19 we'll send in the easel. How do we do, or what's the situation
20 with the digitized evidence or the tape, the cassette tape?

21 MR. HARDING: My IT guy or woman and Louis are working
22 on that. They got a copy of a blank laptop from the court.

23 THE COURT: Right.

24 MR. HARDING: Didn't have the right password and the
25 right software. But my IT person is here, working with him. And

1 she has a list of the files to be included. And I made a list of
2 the files to be included. I should add that it's not a complete
3 solution to the problem, Your Honor.

4 THE COURT: Tell me about that. First tell me what
5 you're going to be able to put on the disk.

6 MR. HARDING: Okay. W-33, the Magginson voice mail.

7 THE COURT: Okay.

8 MR. HARDING: W-38, the Mitchell statement.

9 THE COURT: Okay.

10 MR. HARDING: W-65, the Martin statement.

11 THE COURT: Okay.

12 MR. HARDING: The clip from the Stop Snitching video.

13 THE COURT: Okay.

14 MR. HARDING: MB-42, which is one of those very
15 difficult to understand undercover meetings of Dobropolski and
16 Harris in 2003.

17 THE COURT: Great.

18 MR. HARDING: MB-43, same thing.

19 THE COURT: Great.

20 MR. HARDING: MB-45 is a phone call from Dobropolski to
21 Harris.

22 THE COURT: Okay.

23 MR. HARDING: So is MB-46.

24 THE COURT: Okay.

25 MR. HARDING: And N-29 -- hmm. Maybe that got

1 renumbered. I don't think we have an N-29 in our exhibit list.

2 THE COURT: M as in man or --

3 MR. HARDING: N as in Nancy.

4 THE COURT: Nancy 29?

5 MR. FLANNERY: N-29 might have been the DEA number,
6 original. But it's renumbered by the exhibits. They're all
7 MB's.

8 MR. HARDING: Yeah. I'm going to have to get the right
9 MB number.

10 THE COURT: What is it?

11 MR. HARDING: I'm going to get it. It's a CD of an
12 undercover meeting between Dobropolski and Mr. Harris.

13 THE COURT: Okay.

14 MR. HARDING: And then we have track 11, one of the rap
15 songs from the Pure Shit CD.

16 THE COURT: Okay. And what's --

17 MR. HARDING: Two rap songs.

18 THE COURT: And what's that number?

19 MR. HARDING: It's just called track 11 on here. It's
20 part of SD-1.

21 THE COURT: SD-1?

22 MR. HARDING: Yeah. Which is the, that's supposed to
23 stand for Shakedown and contained that particular CD. Remember
24 that Your Honor admitted only excerpts of certain other songs.

25 THE COURT: Right.

1 MR. HARDING: And the way I played them in court was to
2 cue them up on my laptop.

3 THE COURT: Okay.

4 MR. HARDING: But they aren't excerpted.

5 THE COURT: Okay. So I'll tell the jury about that.

6 MR. HARDING: We're going to have to play it in court.

7 THE COURT: If they want to hear it. Okay. What else
8 is excluded, Mr. Harding, to your --

9 MR. HARDING: Well, the only other thing is the
10 videotape of the assault on Rodney Hayes, which required a
11 special piece of software, which my IT person is trying to load
12 on to your laptop.

13 THE COURT: Okay. And then, of course, we have the
14 cassette, correct, Ms. Rhodes, which is not being put on the CD?

15 MS. RHODES: Correct.

16 THE COURT: And what's on the cassette? Remind me.

17 MS. RHODES: It's the Damita Green redacted statement.
18 Yes. And Ms. Arrington, is the tape recorder up there that we
19 can put on the cart, too?

20 THE COURT: It's in the folder.

21 MS. RHODES: Oh, okay. Not just the cassette?

22 MR. KURLAND: You get the recorder back. Not evidence.

23 MR. HARDING: Your Honor, N-29 is MB-40F.

24 THE COURT: That's a separate CD or is that also going
25 to show up on this consolidated CD?

1 MR. HARDING: It's going to be on the laptop and should
2 be numbered as MB 40F.

3 THE COURT: Are they putting it on the hard drive?

4 MR. HARDING: Yes.

5 THE COURT: Oh, excellent. Okay.

6 MR. HARDING: That's my understanding.

7 THE COURT: Okay.

8 MS. RHODES: Mr. Harding, what's MB-40F?

9 MR. HARDING: N-29.

10 THE COURT: So what's not on the hard drive are the
11 Damita Green statement, which is available separately on the
12 cassette, and the tape recorder is being sent in, and the various
13 excerpts, short excerpts of different tracks from Pure Shit.

14 MR. HARDING: And the jury does, they will get track 11
15 because I think they're going to be able to copy that whole
16 thing.

17 THE COURT: Okay.

18 MR. HARDING: That whole track. And that whole track
19 was admitted.

20 THE COURT: All right. Track 11 should be on the hard
21 drive.

22 MR. HARDING: We have a CD of the courtroom
23 disturbances. I don't think -- that was never loaded on to the
24 laptop.

25 THE COURT: Okay. So is that on the cart?

1 MR. HARDING: It should be.

2 THE COURT: And I won't refer to them as courtroom
3 disturbances. Refer to them as the --

4 MR. HARDING: Obstruction of justice.

5 THE COURT: I'll refer to them as courtroom statements.
6 Okay.

7 MR. FLANNERY: Your Honor, if I could just confirm.

8 THE COURT: Mr. Flannery?

9 MR. FLANNERY: If I could just confirm, because I
10 thought there were more. Confirming with Mr. Harding that all of
11 the Dobropolski/Harris audio, are they going to have the ability
12 to listen to all of that, then? Is it going on the CD?

13 MR. HARDING: All the CD's are in evidence, actually.

14 MR. FLANNERY: So they'll be able to play all those,
15 then?

16 MR. HARDING: Yeah, they can. They're the MB. There's
17 a whole stack of them in here.

18 THE COURT: Okay. So are fewer than all of them going
19 to be on the hard drive, Mr. Harding, your understanding?

20 MR. HARDING: Only a few are on the hard drive.

21 THE COURT: Okay. All right. So CD's of Dobropolski
22 are in evidence and several are going to be on the hard drive.
23 Okay. So Mr. Flannery, you want to doublecheck the final Hayes
24 transcript? My law clerks brought it down, brought down the
25 pages.

MR. KURLAND: Your Honor, could I make one comment with respect to the instructions?

THE COURT: Sure.

MR. KURLAND: If the Court would consider publishing an opinion with respect to the giving of the dual sovereignty instruction. I mean that in all seriousness. There's very little case law on it. And it would be a shame if that is, like, lost. The Court's published opinions in this case have been widely cited. In fact, when I'm down in the federal court in the district, lawyers were always coming up to me asking me to explain the decision with respect to those earlier counts. And I get e-mails all the time about lawyers all over the country dealing with those type of counts.

I think that it would be consistent with whatever the general kind of standard is on published opinions and F. Supp. I think it would greatly enhance the development of the understanding of the law in the area.

THE COURT: All right. I think it may be useful, Mr. Kurland.

MR. KURLAND: Thank you, Your Honor.

MR. HARDING: Judge, we found the CD of the courtroom disturbances, marked as CT-13. I'm sorry. C-13. It's in the same redwell with all the other pro se motions, which are numbered C-1 through C-12.

THE COURT: All right. Thank you.

1 MR. HARDING: It is also a CD that should be playable
2 on the laptop. It played on my laptop.

3 THE COURT: Well, I take it they don't really have it
4 with them now, right? It's here.

5 MR. HARDING: It's in the redwell.

6 THE COURT: Yeah. But I mean, the CD is not with your
7 IT person.

8 MR. HARDING: No. It's not going to be copied.

9 THE COURT: It's not going to be copied. Okay.
10 Belinda, do we know if the laptop has a CD -- I assume it does.
11 Can you call, please?

12 What do we all think of the exhibit lists? Are they in
13 good shape?

14 MS. RHODES: Subject to the photos that Mr. Hanlon is
15 finding, I think they are.

16 THE COURT: Okay. And we've deleted all of those that
17 were marked only for identification?

18 MS. RHODES: Yes.

19 THE COURT: Excellent.

20 MR. HARDING: Ms. Arrington says the CD's will be
21 playable on the laptop.

22 THE COURT: Great. And do we have, Mr. Harding, I
23 think you and I encountered this before perhaps. Sometimes
24 jurors actually want a copy of the indictment that has
25 signatures. And as sometimes happens in this instance, because

1 the special findings are not going in what will need to happen,
2 in fact, it looks actually pretty easy because what we can do --
3 perhaps I should have had Ms. Martinez do this when she went up.
4 What we need to do is to cut and paste the last page of the
5 indictment which, in fact, contains only the signatures of the
6 U.S. Attorney and the foreperson, but with one carry-over line
7 from the special findings.

8 So I'm going to have my law clerk go up and, if you
9 will, please, Melissa. So what we need to do is you need to
10 photocopy, first of all, cut off that line, that carry-over line,
11 and then see if you can just position the signatures of Mr.
12 Rosenstein and the foreperson and make a photocopy of Count 19
13 like that's the last page of the indictment. And if you can do
14 that while leaving the page.

15 Never knew you'd be doing this kind of heavy duty legal
16 lifting? Is that transcript fine, Mr. Flannery?

17 MR. FLANNERY: Yes, sir.

18 THE COURT: And is it on the cart? What's the problem,
19 gentlemen?

20 MR. HARDING: We're revisiting the redaction of the --

21 THE COURT: What's the problem?

22 MR. HARDING: Well --

23 MR. FLANNERY: Your Honor --

24 MR. HARDING: There are two versions of the redaction
25 of this transcript and one version redacted the part that left

1 out how Mr. Mitchell used Shelton Harris to beat up people at the
2 Hickey School.

3 THE COURT: Right.

4 MR. HARDING: The other left that out but also a bunch
5 of other stuff that's admissible. And I'm trying to get Mr.
6 Flannery to agree to use the less redacted version because it
7 leaves out any reference to anything that involves his client and
8 the use of his client to beat people up.

9 THE COURT: Okay. Let me hear from Mr. Flannery.

10 MR. FLANNERY: I would say at a minimum, Your Honor,
11 that there's a particular reference to Rodney Hayes hearing about
12 Willie Mitchell losing his job and hearing about it also in the
13 news. So I would, at a minimum, I think we could probably agree
14 that if that reference, the hearing about that in the news was
15 taken out, then -- originally, we wanted to take an entire
16 section out where it discusses Willie Mitchell losing his job and
17 it starts into the next topic after that.

18 The last part of that topic is about hearing it both
19 from them, but also seeing that this episode or that him losing
20 his job was in the news. And I think that that should be taken
21 out because if anyone's familiar with the Hickey School or knows
22 at some point it was on the news, I think they could infer that
23 Willie Mitchell, and some of the other things they've already
24 heard here, and maybe Shelton Harris, were involved in something
25 that put them in the news, in some Hickey incident.

1 THE COURT: May I see the transcript, please?

2 MR. HARDING: The originally redacted version. This is
3 the more extensively redacted version. There's two redacted
4 versions.

5 THE COURT: All right. Mr. Harding, let's just, you
6 know, life is too short. You don't need that. You don't need
7 that. Let's go with the more heavily redacted.

8 MR. FLANNERY: Thank you, Your Honor.

9 THE COURT: Nina, you can return that to Mr. Harding.

10 Back on the record. I'm glad you came back, Mr.
11 Hanlon, because I wanted to say something. As I mentioned to Ms.
12 Rhodes, I was obsessing over the rap music expert, and I continue
13 to obsess over the rap music expert. And I just wanted to note
14 that, cleaning up my file, I noticed, I took another look at the
15 government's opposition and, in fact, Mr. Hanlon, who I assume
16 was the author of that memo --

17 MR. HANLON: I was not, actually.

18 THE COURT: Mr. Harding. Mr. Harding. Okay. Then I
19 shouldn't have waited for you. Mr. Harding actually makes the
20 very point that came to me at lunch, which is that what you were
21 really trying to do with the rap expert was very analogous to the
22 expert on confession. That was the last part of the government's
23 memorandum in opposition. And I think the government's
24 absolutely right. So whether it was Mr. Hanlon or Mr. Harding,
25 you get credit for that.

1 MR. HANLON: Mr. Harding, Your Honor.

2 THE COURT: And I absolutely agree with the government.

3 That's really what it amounted to. So I'll stop obsessing over
4 that now. Were you able to find the photos, Mr. Hanlon?

5 MR. HANLON: All except one, Your Honor. I can
6 reproduce that one. It's a photograph of a gun inside Darius
7 Spence's apartment. And if it's acceptable to counsel --

8 THE COURT: They don't need that. The gun on the floor
9 behind the bed?

10 MR. HANLON: That's --

11 THE COURT: We all remember that.

12 MR. HANLON: That's the item. Everything else is
13 fixed, Your Honor. I want to take a quick look at some of the
14 lyric exhibits to make sure. There were a couple of --

15 THE COURT: Go ahead and do that now.

16 MR. HANLON: Other than that, we're in good shape.

17 THE COURT: Did you bring the photographs of the ones
18 you found? Are they on the cart now?

19 MR. HANLON: Got them right over there.

20 THE COURT: Would you put them on the cart, please?

21 MR. HARDING: Your Honor, there's one other exhibit
22 that isn't in the exhibit file. That doesn't mean we can't
23 easily reproduce it as soon as we identify what it was. It's
24 B-8. The exhibits were printouts and satellite maps that I was
25 using with Agent Benson. B stands for Benson. And B-8 is

1 missing from the exhibit file. The agent has gone up to look for
2 it. And we can easily reproduce it but we don't know what it is.
3 So if defense counsel have their copies of the exhibits or --

4 THE COURT: I'm sorry. Melissa, you copied the wrong
5 one. You have Rod's signature but you don't have the
6 foreperson's signature. We need both.

7 I'm sorry. I think I cut you off, Mr. Harding. The
8 satellite photos relating to the GPS or the cell tower or what?

9 MR. HARDING: The locations of cell towers were some of
10 the satellite photos. And there were also toll, telephone toll
11 summaries that were used as B exhibits. B-8 is the missing
12 exhibit. We can easily recreate it if we can't find it but we
13 don't know exactly what it was. Because it's listed on our
14 exhibit list as a --

15 THE COURT: What's the problem, Mr. Hanlon?

16 MR. HANLON: These are the lyric exhibits, Your Honor.

17 THE COURT: What are you going to do with them?

18 MR. HANLON: There were a couple of items referenced as
19 exhibit numbers on the list that counsel weren't able to find and
20 I wasn't able to eyeball. I just wanted to check through the
21 file and check upstairs. I think they're probably here.

22 THE COURT: All right. Let's assume they're here.

23 MR. HANLON: That's fine.

24 THE COURT: I think we've worked as long as we can on
25 exhibits.

1 MR. HANLON: That's perfectly fine, Your Honor.

2 THE COURT: While you're standing there, if you'll put
3 that in. This is the Rodney Hayes' redacted transcript, in
4 whatever redwell that should go into. Mr. Flannery would know.

5 I'm going to say to the jury the cart is coming in
6 immediately. I'll remind them to treat the exhibits with care,
7 particularly since they'll be having lunch at the same time. And
8 particularly some of the original documents are rather fragile,
9 so they want to be very careful. I will tell them that they have
10 been placed in rough alphabetical order and that it would
11 probably be very helpful to them to maintain the order of the
12 exhibits.

13 Where are the exhibit lists that will be going in with
14 the cart?

15 MS. RHODES: The main list, Your Honor, I think is
16 awaiting these last things so that she knows what to take off.
17 In other words, she hasn't done the final list yet because of --
18 but the defense exhibits are all listed in the list.

19 THE COURT: No. I don't need to see it. I thought
20 there would be two lists, government exhibits and defense
21 exhibits. Each stapled separately. With Mitchell exhibits,
22 Harris exhibits, Martin exhibits, and Gardner exhibits.

23 MR. HARDING: Judge, this is the one for the government
24 that Ms. Arrington has on her system. So she can just print it
25 out. I think she has one for each defendant as well. If she

1 wants to print them out, we can have copies made.

2 THE COURT: We don't need copies. We just need one. I
3 mean, we only need one exhibit list. I don't want each juror to
4 have a separate exhibit list.

5 MS. RHODES: No, I think he meant copies, we could use
6 a copy, a final copy.

7 THE COURT: Ms. Arrington can do that later, sure.

8 So I guess what I'm not understanding is, are there
9 final exhibit lists?

10 MR. KURLAND: There's five, Your Honor. There's a
11 government one and then one for each defendant, which is my
12 understanding. Ms. Arrington has placed in the front of each
13 packet a separate, or each defendant has its own separate binder.

14 THE COURT: A single binder for each defendant?

15 MR. KURLAND: Yes. And their exhibits are in separate
16 binders. And in each binder -- redwells. I'm sorry. In the
17 front of each redwell there's a single page that lists Mitchell
18 exhibits and then a separate redwell Gardner exhibits. And then
19 the government's, I think there's just obviously one master
20 exhibit list that is broken down by, you know, SSW, whatever.

21 THE COURT: Okay. So what I would, the only other
22 thing I think is necessary, Ms. Arrington, let's print out one
23 full copy of the defense list and one copy of the government list
24 and just put it on top. So in effect they would have two lists
25 for the government and then two lists for each defendant. One in

1 each redwell and then one on top. Okay. Thank you.

2 MR. HANLON: Your Honor, we're holding on to firearms
3 and ammunition exhibits and things like that.

4 THE COURT: Of course.

5 MR. HANLON: Your Honor, how about knives? I think
6 we've taken back knives.

7 THE COURT: No. No knives going in.

8 MR. HANLON: We've taken them back.

9 THE COURT: Okay.

10 MR. KURLAND: Your Honor, one other thing. Is there a
11 necessity to renew all the jury instruction objections?

12 THE COURT: No. Thanks for reminding me. They are
13 incorporated into the record.

14 MR. KURLAND: So we've complied --

15 THE COURT: After I have instructed the jury. All
16 prior exceptions, requests, noted on the record are preserved for
17 all purposes.

18 MR. KURLAND: Your Honor, thank you very much.

19 THE COURT: Okay. All right. I think we're ready,
20 with the exception of the cell phone.

21 MR. HARDING: Yeah. I've got it here, Judge.

22 THE COURT: You've got it? Excellent. Thank you.

23 MR. HARDING: You may recall, Your Honor, when I, when
24 Agent Benson was on the stand, I used this summary that he
25 prepared that had been turned over in discovery, of the names and

1 numbers in one of the cell phones recovered from Valdavia Court
2 when Mr. Mitchell was arrested. And I just called his attention
3 to several names on here, including the number for Goo and the
4 number for Mr. Martin, Goo, and also Weaze. Weaze's number.
5 That's what it is.

6 THE COURT: Okay. You want to insert that into the
7 redwell?

8 MR. HARDING: Yes.

9 THE COURT: Welcome, Mr. Lawlor.

10 MR. LAWLOR: Thank you, Your Honor.

11 THE COURT: We've been doing nothing but housekeeping.

12 MR. LAWLOR: I didn't miss the instructions?

13 THE COURT: I know you're sad about that. But we're
14 just getting started. Anything else? Okay. We'll have the
15 jury, please.

16 (Jury enters the courtroom.)

17 THE COURT: Ladies and gentlemen, good morning. Thank
18 you for your patience. In addition to your note tablets, you'll
19 find on your chairs a copy of the jury instructions which I'm
20 about to give. You'll notice there's a very short table of
21 contents that hopefully will be useful to you in the jury room
22 should you need to refer to the jury instructions.

23 You should feel free to make whatever notes on the copy
24 of the jury instructions that I've provided to you in those
25 looseleafs as you listen to my instructions.

1 And, of course, you're free to read along with me or
2 simply to just listen to me read the instructions. From time to
3 time as I read the instructions I will alert you to what page I'm
4 on, so if you want to listen for a while and read along for a
5 while, you'll be able to catch up.

6 Members of the jury, at the outset I want to thank you
7 for your patience and attention throughout this case, your care
8 and the consideration of the testimonial and documentary
9 evidence, your patience in the matter of recesses and delays when
10 it has been necessary for me to hear counsel out of your
11 presence, and your promptness in making it possible to start each
12 session on time and to resume sessions after recesses without
13 delay.

14 As you already know, the functions of the judge and of
15 the jury in a case of this sort are quite different. It is my
16 duty as judge to instruct you as to the law which applies to this
17 case. It is your duty to decide the facts and, in deciding these
18 facts, to comply with the rules of law and apply them as I state
19 them to you, without regard to what you think the law is or
20 should be.

21 In my instructions to you on the law of this case,
22 copies of which, of course, have been provided to you for your
23 use during deliberations, if I state any rule, direction or idea
24 in varying ways, no emphasis is intended by me and none must be
25 inferred by you. You are not to single out any particular

1 sentence or individual point or instruction and ignore the
2 others. Rather, you are to consider all of my instructions as a
3 whole and you are to regard each instruction in the light of all
4 others.

5 Counsel have quite properly referred to some of the
6 governing rules of law in their arguments. If, however, any
7 difference appears to you between the law as stated by counsel
8 and that stated by the Court in these instructions, you are of
9 course to be governed by the Court's instructions.

10 Now, there are four defendants before you in this case.
11 The fourth superseding indictment, which I will refer to simply
12 as the indictment, contains a total of 19 counts. You must, as a
13 matter of law, consider each of the 19 counts of the indictment
14 that are before you and each defendant's involvement in each
15 count in which he is named separately. And you must return a
16 separate verdict as to each defendant for each of the counts in
17 which he is charged.

18 In reaching your verdict, bear in mind that guilt is
19 personal and individual. Your verdict of guilty or not guilty
20 must be based solely upon the evidence about each defendant. The
21 case against each defendant on each count stands or falls upon
22 the proof or lack of proof against that defendant alone. And
23 your verdict as to any defendant on any count, with a narrow
24 exception which I will explain, should not control your decision
25 as to any other defendant or any other count. No other

1 considerations are proper.

2 From time to time in these instructions, for ease of
3 reference, I will use the singular term "defendant" or the plural
4 form, "defendants." You will understand that all of these
5 instructions apply individually to each defendant except when the
6 context makes explicit that only one defendant is being referred
7 to or that two or more particular defendants, but not all
8 defendants, are being referred to.

9 This case is important to the government for the
10 enforcement of criminal laws as a matter of prime concern for the
11 community. Equally, it is important to the defendants who are
12 charged with serious crimes.

13 The fact that the prosecution is brought in the name of
14 the United States of America entitles the government to no
15 greater or lesser consideration than that accorded to the
16 defendants.

17 You and only you are the judges of the facts. If any
18 expression of mine or anything I may or may not have done or said
19 would seem to indicate any opinion relating to any factual
20 matters, I instruct you to disregard it.

21 You are to draw no inference from the fact that upon
22 occasion I may have asked questions of certain witnesses. These
23 questions were only intended for clarification or to expedite
24 matters, and certainly were not intended to suggest any opinion
25 on my part as to the verdict you should render or whether any of

1 the witnesses may have been more credible than any other witness.
2 You are expressly to understand that the Court has no opinion as
3 to the verdict you should render in this case.

4 In deciding the facts, you may consider not only any
5 evidence to which I may refer and the evidence to which you may
6 have been referred by counsel in their arguments, but you may
7 also consider any testimony or exhibits in the case whether or
8 not referred to by me or by counsel which you believe to be
9 important to your decision.

10 Your verdict must be based solely upon the evidence
11 developed at trial or the lack of evidence. It would be improper
12 for you to consider, in reaching your decision as to whether the
13 government sustained its burden of proof, any personal feelings
14 you may have about any defendant's race, religion, national
15 origin, sex, or age. All persons are entitled to the presumption
16 of innocence and the government has the burden of proof, as I
17 will discuss in a moment.

18 You must disregard any and all reports which you have
19 read, seen, or heard through the news media, and any statements
20 or inferences contained therein. Such matters are not facts in
21 evidence in this case. You must not permit such matters to
22 influence your judgment in arriving at a true verdict in this
23 case.

24 It would be equally improper for you to allow any
25 feelings you might have about the nature of the crimes charged to

1 interfere with your decisionmaking process. To repeat, your
2 verdict must be based exclusively upon the evidence or the lack
3 of evidence.

4 As jurors, you are not to be swayed by sympathy. You
5 are to be guided solely by the evidence in the case. And the
6 question you must ask yourselves as you sift through the evidence
7 is, Has the government proven the guilt of the defendants beyond
8 a reasonable doubt? It is for you alone to decide whether the
9 government has proven that a defendant is guilty of any of the
10 crimes charged solely on the basis of the evidence and subject to
11 the law as I instruct you.

12 It must be clear to you that once you let fear or
13 prejudice or bias or sympathy interfere with your thinking, there
14 is a risk that you will not arrive at a true and just verdict.

15 If you have a reasonable doubt as to a defendant's
16 guilt, you should not hesitate for any reason to find a verdict
17 of not guilty. But on the other hand, if you should find that
18 the government has met its burden of proving a defendant's guilt
19 beyond a reasonable doubt, you should not hesitate because of
20 sympathy or for any other reason to render a verdict of guilty.

21 Generally speaking, there are two types of evidence
22 from which a jury may properly find the truth as to the facts of
23 a case. One is direct evidence, such as the testimony of an
24 eyewitness. The other type of evidence is indirect or
25 circumstantial evidence, the proof of a chain of circumstances

1 pointing to the existence or non-existence of certain facts.

2 There is a simple example of circumstantial evidence
3 which is often used. Assume that when you entered the jury
4 deliberation room this morning the sun was shining. As you were
5 sitting there, someone walked in with an umbrella that was
6 dripping wet. Someone else then walked in with a rain coat that
7 was also dripping wet. You cannot look outside of the jury room.
8 Consequently, you have no direct evidence of whether or not it is
9 raining. But on the combination of facts, it would be reasonable
10 and logical for you to conclude that it had been raining.

11 That is all there is to circumstantial evidence. You
12 infer on the basis of reason and experience from an established
13 fact the existence or the non-existence of some other fact.

14 An inference is not a suspicion or a guess. It is a
15 reasoned, logical decision to conclude that a disputed fact
16 exists on the basis of another fact which you find exists.

17 In this connection, there are times when different
18 inferences may be drawn from facts, whether proved by direct or
19 circumstantial evidence. The government may ask you to draw one
20 set of inferences, while the defense may ask you to draw another.
21 It is for you and you alone to decide what inferences you will
22 draw.

23 The process of drawing inferences from facts in
24 evidence is not a matter of guesswork or speculation. An
25 inference is a deduction or conclusion which you, the jury, are

1 permitted to draw, but not required to draw, from the facts which
2 have been established by either direct or circumstantial
3 evidence. In drawing inferences, you should exercise your common
4 sense.

5 So while you are considering the evidence presented to
6 you, you are permitted to draw from the facts which you find to
7 be proven such reasonable inferences as would be justified in
8 light of your experience.

9 Here again, let me remind you that, whether based upon
10 direct or circumstantial evidence or upon the logical, reasonable
11 inferences drawn from such evidence, you must be satisfied of the
12 guilt of the defendant beyond a reasonable doubt before you may
13 convict.

14 Circumstantial evidence is of no less value than direct
15 evidence. As a general rule, the law makes no distinction
16 between direct and circumstantial evidence, but simply requires
17 that the jury find the facts in accordance with all the evidence
18 in the case that you find persuasive, both direct and
19 circumstantial.

20 The statements, objections, and arguments of counsel
21 are not evidence and should not be considered as evidence. The
22 evidence does not include questions. Only the answers are
23 evidence. But you may not consider any answer that I've directed
24 you to disregard or that I directed struck from the record.

25 The evidence in the case which you may consider with

1 respect to all charges consists of the sworn testimony of the
2 witnesses, all exhibits received in evidence, and all facts which
3 may have been stipulated. A stipulation is an agreement among
4 the parties that a certain fact is true. You should regard such
5 agreed facts as true.

6 Any evidence as to which an objection was sustained by
7 the Court and any evidence ordered stricken by the Court must be
8 entirely disregarded. Anything you may have seen or heard
9 outside the courtroom is not evidence and must be entirely
10 disregarded.

11 A number of exhibits have been admitted into evidence
12 in this case and will be available for your review. Other than
13 to help keep track of the exhibits, the numbers on the exhibits
14 have no particular significance as counsel premarked them to help
15 the court clerk. At trial, certain exhibits that were premarked
16 may not have been used and so there may be gaps in the numbering
17 of certain items.

18 You may consider any exhibit for any purpose consistent
19 with these instructions that will assist you in evaluating the
20 merits of this case and you should give them the weight and
21 credibility that you deem appropriate. The weight and probative
22 value of any exhibit is for you and only you to determine.

23 Regarding the tape of the Irene Magginson voice mail,
24 you have seen two separate documents, one containing the
25 government's interpretation of what appears on the tape

1 recording, the other containing defendant Harris's
2 interpretation. Both of these versions of the transcripts have
3 been given to you as a guide to assist you in listening to the
4 tapes. Neither transcript has been received in evidence.
5 Rather, it is the tape recording which is the evidence and the
6 transcripts are only guides. The transcripts were only provided
7 to you as an aid and you should make your own determination as to
8 what was actually said or not said on the tape.

9 You alone should make your own interpretation of what
10 appears on the tapes from what you hear. You may use both the
11 government version and defendant Harris's versions of the
12 transcripts to assist you in this task. If you think you hear
13 something differently from the manner in which the government or
14 defendant Harris has interpreted on their version of the
15 transcripts, then you are to follow your own interpretation.

16 You may agree partially with each and you may accept
17 those portions you agree with and reject those portions you
18 disagree with. You need not select between the two versions.
19 And you must come up with your own findings of what appears on
20 the tape. You, the jury, are the sole judges of the facts.

21 During trial, the Court admitted a letter allegedly
22 seized during a search of Mr. Martin's residence, Two Cree Court,
23 on April 17, 2002. The Court provisionally admitted the letter,
24 which was addressed to Nephew, subject to the government's
25 establishing that it was related to the charges in this case.

1 The government has now withdrawn the letter and, accordingly, the
2 letter and any testimony concerning the letter are no longer
3 before you to be considered by you, and are not to be considered
4 by you for any purpose in this case.

5 I have admitted certain pro se papers which the
6 defendants allegedly filed with the Clerk of the Court. A pro se
7 pleading is one which a party to a civil or criminal case files
8 on his or her own behalf without going through a lawyer.
9 Ordinarily, there is nothing peculiar or inappropriate about a
10 criminal defendant filing a pro se pleading. Defendants in
11 criminal cases do so frequently.

12 The government has argued that the pro se pleadings of
13 various defendants are similar and employ identical language and
14 that the defendants' alleged use of the pro se pleading
15 constitutes evidence of a continuation of the alleged
16 racketeering conspiracy charged in Count One of the indictment
17 insofar as, according to the government, they represented
18 attempts to obstruct justice in this case.

19 The defense vigorously disputes the government's
20 assertion in these regards, contending that the pro se papers
21 represent nothing more than a lay person's untutored effort to
22 assert legally immaterial defenses to serious criminal charges.

23 In their pro se pleadings, the defendants have raised
24 so-called jurisdictional defenses. In those pleadings, they're
25 asserting that the Court lacks jurisdiction to consider the

1 offenses that the indictment charges they have committed. I have
2 denied those motions and you are not to consider the so-called
3 jurisdictional defenses raised in those pro se pleadings.

4 I would caution you, however, that the fact that the
5 Court has denied these pro se motions and determined that you,
6 the jury, should not consider the assertions in those pro se
7 papers as defenses in this case means simply that it is for you
8 and you alone to make a determination as to the interpretation,
9 evaluation, and weight, if any, you should give to those exhibits
10 in determining whether the government has proven the charges
11 against the defendants beyond a reasonable doubt.

12 Certain summaries were drawn for you or shown to you in
13 order to make other evidence more meaningful and to aid you in
14 considering the evidence. The summaries are no better or worse
15 than the testimony or documents upon which they are based and are
16 not themselves independent evidence. Therefore, you are to give
17 no greater consideration to those summaries than you would give
18 to the evidence upon which they are based.

19 At times throughout the trial the Court has been called
20 upon to pass on the admissibility of certain offered evidence.
21 You should not be concerned with the Court's rulings or the
22 reasons for them. Whether evidence which has been offered is
23 admissible or is not admissible is purely a question of law and
24 from a ruling on such question you are not to draw any inference.

25 In admitting evidence to which an objection has been

1 made, the Court does not determine what weight should be given
2 such evidence. You must not guess what the answer might have
3 been to any question to which an objection was sustained and you
4 must not speculate as to the reason the question was asked or the
5 reason for the objection.

6 You as jurors are the sole judges of the credibility of
7 the witnesses and the weight their testimony deserves. You are
8 not bound to believe any witness even though his or her testimony
9 is uncontradicted. In determining whether or not to believe a
10 witness, you should carefully scrutinize the testimony given, the
11 circumstances under which each witness has testified, and every
12 matter in evidence which tends to indicate whether the witness is
13 worthy of belief.

14 Consider each witness' intelligence, motive, and state
15 of mind, and his or her demeanor and manner while on the stand.
16 Consider the witness' ability to observe the matters as to which
17 he or she has testified and whether the witness impresses you as
18 having an accurate recollection of these matters.

19 Consider, also, any relation each witness may bear to
20 either side of the case and the manner in which each witness
21 might be affected by the verdict. Ask yourself whether the
22 witness has some incentive or loyalty that might cause him or her
23 to shade the truth. Or does the witness have some bias,
24 prejudice, or hostility that may have caused the witness to give
25 you something other than a completely accurate account of the

1 facts.

2 Consider the extent to which, if at all, the testimony
3 of each witness is either supported or contradicted by other
4 evidence.

5 You have heard evidence that certain witnesses made
6 statements on earlier occasions which counsel may have argued, or
7 you may conclude, are inconsistent with the witness' trial
8 testimony. Except as I further instruct you later in these
9 instructions, evidence of a prior inconsistent statement is not
10 to be considered by you as affirmative evidence bearing on the
11 defendant's guilt. Evidence of the prior inconsistent statement
12 was placed before you for the more limited purpose of helping you
13 decide whether to believe the trial testimony of the witness who
14 contradicted himself or herself.

15 If you find that a witness made an earlier statement
16 that conflicts with the witness' trial testimony, you may
17 consider that fact in deciding how much of the trial testimony,
18 if any, to believe. In making this determination, you may
19 consider whether the witness purposefully made a false statement
20 or whether it was an innocent mistake, whether the inconsistency
21 concerns an important fact or whether it had to do with a small
22 detail, whether the witness had an explanation for the
23 inconsistency, and whether that explanation appealed to your
24 common sense.

25 It is exclusively your duty, based upon all the

1 evidence and your own good judgment, to determine whether the
2 prior statement was inconsistent and, if so, how much, if any,
3 weight to be given to the inconsistent statement in determining
4 whether to believe all or part of the witness' testimony.

5 Inconsistencies or discrepancies in the testimony of a
6 witness or between the testimony of different witnesses may or
7 may not cause the jury to discredit such testimony. Two or more
8 persons witnessing an incident may see or hear it differently.
9 An innocent misrecollection, like failure of recollection, is not
10 an uncommon experience.

11 Inconsistencies or discrepancies in the testimony of a
12 witness or between the testimony of differing witnesses should be
13 considered by you, but in weighing their effect you should
14 consider whether the inconsistencies or discrepancies pertain to
15 a matter of importance or to an unimportant detail and whether
16 the discrepancy or inconsistency results from innocent error or
17 willful falsehood.

18 The exception to the above instruction applies to the
19 testimony of the following witnesses: Rodney Hayes, Damita
20 Green, and Ernest Reynolds. You may consider the grand jury
21 testimony of Hayes and Green and one excerpt from the grand jury
22 testimony of Reynolds as if the testimony or the excerpt of
23 testimony given before the grand jury was actually given during
24 the trial. The transcripts of the grand jury testimony of Hayes
25 and Green and the excerpt for Reynolds have been admitted as

1 exhibits in this case and will be available to you during your
2 deliberations, together with other exhibits.

3 Now, let me depart from the text for just a moment,
4 ladies and gentlemen, because it occurs to me that something's
5 been left out here and I want to tell you now what that is. You
6 will recall that the police interview of Ms. Damita Green was
7 also agreed to by counsel and admitted into evidence and may be
8 considered by you for all purposes in this case. The transcript
9 of the Damita Green interview was not admitted into evidence,
10 although it was provided to you for your use, as were other
11 transcripts, while you listened to the tape of Ms. Damita Green's
12 interview by the police.

13 The tape of Ms. Damita Green's interview with the
14 police is admitted into evidence and will be available to you.
15 But again, the transcript is not available. The transcript of
16 her grand jury testimony will be available to you for your
17 consideration as an exhibit in this case.

18 Okay. To return to the text.

19 You have heard from a number of types of witnesses.
20 Specifically, there has been testimony from government witnesses
21 who have pled guilty after entering into an agreement with the
22 federal government or with the state government to testify.
23 There's been testimony from witnesses who were admitted or
24 alleged accomplices in some of the crimes charged in the
25 indictment. There have been witnesses who testified under a

1 grant of immunity from the federal government and/or the state
2 government, whereby their testimony will not be used against them
3 in any criminal case. I instruct you that there is nothing
4 improper in the government's use of these types of witnesses and
5 the government is permitted to enter into the type of plea or
6 immunity agreements you have seen in this case.

7 The government may argue, as it is permitted to do,
8 that it must take the witnesses as it finds them. It may argue
9 that people who themselves take part in criminal activity have
10 the knowledge required to show criminal behavior by others. The
11 defense may dispute these contentions. You, in turn, may accept
12 the testimony of these witnesses and convict a defendant on the
13 basis of the witness' testimony alone if it convinces you of the
14 defendant's guilt beyond a reasonable doubt. However, it is also
15 the case that testimony from witnesses of the type I have
16 described here must be examined with caution and weighed with
17 great care. I have given you some general considerations on
18 credibility and I will not repeat them here. However, let me say
19 a few things that you should consider during your deliberations
20 with respect to these witnesses.

21 You should ask yourselves whether these witnesses would
22 benefit more by lying or by telling the truth. Was their
23 testimony made up in any way because they believed or hoped that
24 they would somehow receive favorable treatment by testifying
25 falsely? Or did they believe that their interests would be best

1 served by testifying truthfully?

2 If you believe that the witness was motivated by hopes
3 of personal gain, was the motivation one which would cause him or
4 her to lie or was it one which would cause him or her to tell the
5 truth? Did this motivation color his or her testimony?

6 In sum, you should look at all of the evidence in
7 deciding what credence and what weight, if any, you will want to
8 give to these witnesses.

9 There may have been evidence introduced at the trial
10 that the government called as witnesses persons who were using or
11 addicted to drugs when the events he or she observed took place
12 or who may now be or was recently using drugs. I instruct you
13 that there is nothing improper about calling such a witness to
14 testify about events within his or her personal knowledge. On
15 the other hand, his or her testimony must be examined with
16 greater scrutiny than the testimony of any other witness.

17 The testimony of a witness who was using drugs at the
18 time of the events he or she is testifying about or who was using
19 drugs or is an addict at the time of his or her testimony may be
20 less believable because of the effect the drugs may have on his
21 or her ability to perceive or relate the events in question. If
22 you decide to accept his or her testimony after considering it in
23 light of all the evidence in this case, then you may give it
24 whatever weight, if any, you find it deserves.

25 You have heard the testimony of witnesses who were

1 previously convicted of a crime punishable by more than one year
2 in jail or involving dishonesty or false statement. These prior
3 convictions were put into evidence for you to consider in
4 evaluating the witness' credibility. You may consider the fact
5 that some of the witnesses who testified are convicted felons in
6 deciding how much of their testimony to accept and what weight,
7 if any, it should be given.

8 You have heard the testimony of law enforcement
9 officials. The fact that a witness may be employed by the
10 federal government or the state government as a law enforcement
11 official does not mean that his or her testimony is necessarily
12 deserving of more or less consideration or greater or lesser
13 weight than that of an ordinary witness. At the same time, it is
14 quite legitimate for defense counsel to try to attack the
15 credibility of a law enforcement witness, and you are to give
16 that testimony whatever weight, if any, you find it deserves.

17 You should also keep in mind that the burden of proof
18 is always on the government and the defendants are not required
19 to call any witnesses or offer any evidence since they are
20 presumed to be innocent.

21 You have heard testimony from several experts. An
22 expert is allowed to express his or her opinion on those matters
23 about which he or she has special knowledge and training. Expert
24 testimony is presented to you on the theory that someone who is
25 experienced in the field can assist you in understanding the

1 evidence or in reaching an independent decision on the facts.

2 In weighing an expert's testimony, you may consider the
3 expert's qualifications, his or her opinions, his or her reasons
4 for testifying, as well as all of the other considerations that
5 ordinarily apply when you are deciding whether or not to believe
6 a witness' testimony. You may give the expert testimony whatever
7 weight, if any, you find it deserves in light of all the evidence
8 in this case. You should not, however, accept this witness'
9 testimony merely because he or she is an expert, nor should you
10 substitute it for your own reason, judgment, and common sense.
11 The determination of the facts in this case rests solely with
12 you.

13 After you have considered all of the factors bearing
14 upon the credibility of a witness which I have mentioned to you,
15 you may decide to accept all of the testimony of a particular
16 witness, none of the testimony of a particular witness, or part
17 of the testimony of a particular witness. In other words, you
18 may give the testimony of any witness such credibility and
19 weight, if any, as you may think it deserves.

20 The law does not require the prosecution to call as
21 witnesses all persons who may have been present at any time or
22 place involved in the case or who may appear to have some
23 knowledge of the matters at issue in this trial. Nor does the
24 law require the prosecution to produce as exhibits all papers and
25 things mentioned in the evidence in the case.

1 You may have heard arguments by counsel that the
2 government did not utilize specific investigative techniques in
3 some respect. You may consider these facts in deciding whether
4 the government has met its burden of proof because, as I told
5 you, you should look to all of the evidence or lack of evidence
6 in deciding whether the defendants are guilty.

7 However, you also are instructed that there is no legal
8 requirement that the government use any of these specific
9 investigative techniques to prove its case. The use or non-use
10 of a particular law enforcement or investigative technique is not
11 your concern. Rather, your concern, as I have said, is to
12 determine whether or not on the evidence or lack of evidence the
13 defendant's guilt has been proved beyond a reasonable doubt.

14 You have heard testimony and seen documents regarding
15 the use of telephones and mobile communication devices. The fact
16 that a telephone or similar communications device may be
17 subscribed to by a particular person, without more, is not proof
18 that a particular call that originated from or was received by
19 that phone or device was made or received by the person who is
20 the subscriber or who customarily employed that phone or device.
21 This is a matter as to which you may, but are not required, to
22 draw reasonable inferences, as I have previously instructed you.

23 The fact that one party called more witnesses and
24 produced more evidence than another party does not mean that you
25 should necessarily find the facts in favor of the side offering

1 the most witnesses. In other words, it is the quality, not the
2 quantity, of evidence that is important.

3 You are about to be asked to decide whether or not the
4 government has proven beyond a reasonable doubt the guilt of
5 these defendants. You are not being asked whether any other
6 person has been proven guilty. Your verdict should be based
7 solely upon the evidence or lack of evidence as to these
8 defendants in accordance with my instructions and without regard
9 to whether the guilt of other people has or has not been proven.

10 You may not draw any inference, favorable or
11 unfavorable, towards the government or the defendants on trial
12 from the fact that certain other persons were not named as
13 defendants in the indictment. Whether a person should be
14 indicted as a defendant is a matter within the sole discretion of
15 the United States Attorney and the grand jury. Therefore, you
16 may not consider it in any way in reaching your verdict as to the
17 defendant on trial.

18 The burden is on the prosecution, that is the
19 government, to prove the defendant's guilt beyond a reasonable
20 doubt. As a result, the defendants begin the trial here with a
21 clean slate. This presumption of innocence alone is sufficient
22 to acquit the defendants unless you, after a careful and
23 impartial consideration of all the evidence, are unanimously
24 convinced beyond a reasonable doubt of each defendant's guilt.

25 Note that the government's burden is not to prove guilt

1 beyond all possible doubt, but beyond reasonable doubt. If the
2 government fails to sustain its burden, you must find the
3 defendant not guilty. This burden never shifts to the defendant
4 for the simple reason that the law never imposes upon a defendant
5 in a criminal case the reason or duty of calling any witness or
6 producing any evidence.

7 The defendants did not testify in this case. Under our
8 Constitution, they have no obligation to testify or to present
9 any other evidence because it is the prosecution's burden to
10 prove a defendant guilty beyond a reasonable doubt. That burden
11 remains with the prosecution throughout the entire trial and
12 never shifts to the defendant. A defendant is never required to
13 prove that he is innocent.

14 You may not attach any significance to the fact that a
15 defendant did not testify. No adverse inference against him may
16 be drawn by you because he did not take the witness stand. You
17 may not consider this against a defendant in any way during your
18 deliberations in the jury room.

19 As you know, the defendants have been detained pending
20 trial in this case. As I instructed you before, the fact that a
21 defendant is detained pending trial does not diminish the
22 presumption of innocence that protects the defendant.

23 There's been evidence that one or more of the
24 defendants made certain statements to law enforcement officers in
25 which the government argues the defendant admitted certain facts,

1 which the government further argues support the charges in the
2 indictment. In addition, you have heard evidence that one or
3 more of the defendants made exculpatory statements, which you may
4 find are contradicted by evidence at trial.

5 In deciding what weight to give a defendant's
6 statements, you should first examine with great care whether each
7 statement was made and whether, in fact, it was voluntarily and
8 understandingly made. I instruct you that you are to give the
9 statements such weight as you feel they deserve in light of all
10 the evidence.

11 An exculpatory statement by a defendant which is
12 contradicted by trial evidence may be considered by you as
13 evidence of the defendant's consciousness of guilt.

14 You have heard testimony that one or more defendants
15 may have attempted to persuade one or more government witnesses
16 not to cooperate or testify. You may not consider such evidence
17 as a substitute for proof of guilt in this case. However, if you
18 find that a defendant knowingly attempted to persuade a
19 government witness not to cooperate with the government or that
20 he threatened to harm someone he believed may be a witness for
21 the government, you may, but are not required, to infer that the
22 defendant believed that he was guilty of the crimes for which he
23 is here charged.

24 Whether or not evidence of a defendant's attempt to
25 persuade a witness not to cooperate shows that the defendant

1 believed that he was guilty of the crimes for which he is now
2 charged and the significance, if any, to be given to such
3 evidence is for you, the jury, to decide.

4 Knowledge, willfulness, and intent involve the state of
5 a person's mind. It has often been said to juries that the state
6 of one's mind is a fact as much as the state of his digestion.
7 Accordingly, this is fact you are called upon to decide.

8 Medical science has not yet devised an instrument which
9 can record what was in one's mind in the distant past. Rarely is
10 direct proof available to establish the state of one's mind.
11 This may be inferred from what he says or does, his words, his
12 acts, and his conduct, as of the time of the occurrence of
13 certain events.

14 Ladies and gentlemen of the jury, it's been my
15 experience after many years as a judge that when I'm chilly in a
16 courtroom, everybody else is chilly, too. I'm chilly. So I'll
17 ask Ms. Arrington if she can check the thermostat and see if we
18 can't bring some heat into this courtroom.

19 Thank you, Ms. Arrington.

20 The intent with which an act is done is often more
21 clearly and conclusively shown by the act itself or by a series
22 of acts than by words or explanations of the act uttered long
23 after its occurrence. Accordingly, intent, willfulness, and
24 knowledge are usually established by surrounding facts and
25 circumstances as of the time the acts in question occurred or the

1 events took place and the reasonable inferences to be drawn from
2 them.

3 Proof of motive is not a necessary element of the crime
4 with which the defendants are charged. Proof of motive does not
5 establish guilt nor does want of proof of motive establish that a
6 defendant is innocent. If the guilt of a defendant is shown
7 beyond a reasonable doubt, it is immaterial what the motive for
8 the crime may be or whether any motive be shown. But the
9 presence or absence of motive is a circumstance which you may
10 consider as bearing on the intent of a defendant.

11 Two of the distinct charges in the indictment which
12 name all of the defendants, Count One and Count Eight, charge the
13 crime of conspiracy. The first, a racketeering conspiracy; and
14 the second, a narcotics conspiracy. In addition, Count One of
15 the indictment contains allegations of so-called racketeering
16 acts, as I will define that term in a moment, some of which are
17 themselves conspiracies. There are particular evidentiary
18 considerations which I must explain to you in connection with
19 proof of a conspiracy offense.

20 You will recall that I have admitted into evidence
21 against the defendants the acts and statements of others because
22 these acts and statements were committed by persons who, the
23 government charges, were also confederates or coconspirators of
24 the defendants on trial. The reason for allowing this evidence
25 to be received against the defendants has to do with the nature

1 of the crime of conspiracy.

2 A conspiracy is often referred to as a partnership in
3 crime. Thus, as in other types of partnerships, when people
4 enter into a conspiracy to accomplish an unlawful end, each and
5 every member becomes an agent for the other conspirators in
6 carrying out the conspiracy. Accordingly, the reasonably
7 foreseeable acts, declarations, statements, and omissions of any
8 member of the conspiracy and in furtherance of the common purpose
9 of the conspiracy are deemed under law to be the acts of all of
10 the members, and all of the members are responsible for such
11 acts, declarations, statements, and omissions.

12 If you find beyond a reasonable doubt that the
13 defendant whose guilt you are considering was a member of the
14 particular conspiracy charged in the indictment which you are
15 considering, then any acts done or statements made in furtherance
16 of that conspiracy by persons also found by you to have been
17 members of that conspiracy may be considered against that
18 defendant. This is so even if such acts were done and statements
19 were made in the defendant's absence and without his knowledge.

20 However, before you may consider the statements or acts
21 of a coconspirator in deciding the issue of a defendant's guilt,
22 you must first determine that the acts and statements were made
23 during the existence and in furtherance of the conspiracy. If
24 the acts were done or the statements were made by someone whom
25 you do not find to have been a member of the conspiracy, or if

1 they were not done or said in furtherance of the conspiracy, they
2 may be considered by you as evidence only against the member who
3 did or said them.

4 In a few instances, the Court admitted statements made
5 by a defendant which were not in furtherance of any conspiracy
6 and which discussed one or more codefendants. The Court allowed
7 Maryland State Police Sergeant George Wooden to testify about a
8 statement he testified that Shawn Gardner made in May, 1999 after
9 Gardner was stopped on Interstate 95, that mentioned Mr. Martin.
10 That statement is admitted only against Mr. Gardner. And I
11 instruct you that it cannot be considered in any way or for any
12 purpose in your consideration of any of the charges against any
13 other defendant, including Mr. Martin, or in answering questions
14 about any defendant other than Mr. Gardner, in completing the
15 special verdict form.

16 Similarly, Christopher Dobropolski testified about a
17 statement Mr. Mitchell made to him about an unnamed individual
18 who was facing state charges with Mr. Mitchell. That statement
19 can only be used against Mr. Mitchell and not against any other
20 defendant.

21 Again, as I have instructed you concerning statements
22 which may have been made in furtherance of a conspiracy, those
23 statements can only be used against the defendant other than the
24 one who made the statement if you first determine that the
25 statement was made during the existence of a conspiracy, in

1 furtherance of the existing conspiracy, and the defendant against
2 whom the statement is to be used was a member of the existing
3 conspiracy at the time the statement was made.

4 There are several other considerations bearing on the
5 issue of conspiracy law which you should bear in mind. One or
6 more of the defendants have raised the defense that he was not a
7 member of a particular conspiracy alleged in the indictment
8 because he withdrew from the conspiracy. Also, one or more of
9 the defendants have raised the issue of whether the proof shows
10 that there existed only multiple conspiracies, rather than the
11 two distinct, overarching conspiracies which are charged in
12 Counts One and Eight of indictment, as I shall instruct you in a
13 moment.

14 Once a person joins a conspiracy, that person remains a
15 member until he withdraws from it. Any withdrawal must be
16 complete and it must be done in good faith. A person can
17 withdraw from a conspiracy by taking some affirmative steps to
18 terminate or abandon his participation in and efforts to promote
19 the conspiracy. In other words, the defendant must have
20 demonstrated some type of positive action which disavowed or
21 defeated the purpose of the conspiracy.

22 By way of example, a defendant may withdraw from a
23 conspiracy by giving a timely warning to proper law enforcement
24 officials or wholly depriving his prior efforts of effectiveness
25 in the commission of a crime, or making appropriate efforts to

1 prevent the commission of a crime, or by doing acts which are
2 inconsistent with the objects of the conspiracy and making
3 reasonable efforts to communicate those acts to his
4 coconspirators.

5 Although you may consider whether any defendant's
6 participation in a conspiracy ended when he was arrested, the
7 mere arrest of a conspirator does not inevitably terminate a
8 conspiracy or establish the arrested person's withdrawal from the
9 conspiracy. In the absence of definite proof, withdrawal from or
10 abandonment of the conspiracy should not be presumed merely
11 because a defendant has been arrested or becomes incarcerated. A
12 defendant's membership in a conspiracy is presumed to continue
13 until he withdraws from the conspiracy by affirmative action.

14 In this regard, you are reminded that the burden
15 remains with the government to prove beyond a reasonable doubt
16 that the defendant was a member of the conspiracy charged in the
17 indictment.

18 In addition, as mentioned above, the defendants contend
19 that the government's proof fails to show the existence of only
20 one overarching racketeering conspiracy or one overarching
21 narcotics conspiracy. Rather, they claim that at most there were
22 actually several separate and independent conspiracies with
23 various groups of members.

24 Whether there existed a single unlawful agreement or
25 many such agreements or, indeed, no agreement at all, is a

1 question of fact for you, the jury, to determine in accordance
2 with the instructions I am about to give you.

3 When two or more people join together to further one
4 common, unlawful purpose, a single conspiracy exists. By way of
5 contrast, separate conspiracies exist when there are separate
6 unlawful agreements to achieve distinct purposes.

7 Proof of several separate and independent conspiracies
8 is not proof of the single overall conspiracies charged in Counts
9 One and Eight of the indictment unless one of the conspiracies
10 proved happens to be the single conspiracy described in those
11 counts of the indictment.

12 You may find that there was a single overarching
13 conspiracy despite changes in personnel, by the termination,
14 withdrawal or additions of new members, or activities or both, so
15 long as you find that some of the coconspirators continued to act
16 for the entire duration of the conspiracy for the purposes
17 charged in the indictment. The fact that the members of the
18 conspiracy are not always identical does not necessarily imply
19 that separate conspiracies exist.

20 On the other hand, if you find that the conspiracy
21 charged in Counts One or Count Eight of the indictment did not
22 exist, you cannot find any defendant guilty of the single
23 conspiracy charged in that count or of offenses in any other
24 count or counts which are dependent on establishment of that
25 conspiracy. This is so even if you find that some conspiracy

1 other than the one charged in this indictment existed, even
2 though the purposes of both conspiracies may have been the same
3 and even though there may have been some overlap in the
4 membership.

5 Similarly, if you find that a particular defendant was
6 a member of another conspiracy and not of a conspiracy charged in
7 the indictment, then you must acquit the defendant of that
8 conspiracy charge and of any charge dependent upon it.

9 Therefore, what you must do is determine, as I shall
10 instruct you in a moment, whether the conspiracies charged in
11 Counts One and Eight of the indictment existed. If it did, you
12 must determine the nature of that conspiracy and who were its
13 members.

14 With these preliminary instructions in mind, let us
15 turn to the charges against the defendants as contained in the
16 indictment. I remind you that the indictment itself is not
17 evidence. It merely describes the charges made against the
18 defendants. It is an accusation. It may not be considered by
19 you as any evidence of the guilt of the defendants.

20 Obviously, the defendants are not charged with
21 committing any crime other than the offenses contained in the
22 indictment and you are only to consider and return a verdict as
23 to the charges contained in the indictment.

24 Count One of the indictment charges all of the
25 defendants with conspiracy to violate the Racketeer Influenced

1 and Corrupt Organizations statute. This means that each
2 defendant has been charged with conspiracy to conduct or to
3 participate in the affairs of an enterprise through a pattern of
4 racketeering activity.

5 Count One of the indictment reads as follows:

6 The grand jury for the District of Maryland charges
7 that at various times relevant to this fourth superseding
8 indictment, Willie Mitchell, AKA Bo, Shelton Harris, AKA Rock,
9 Little Rock, Hard Rock, Shelly Wayne Martin, AKA Wayne, Weaze,
10 Weazy, and Shawn Gardner, AKA Goo, along with others known and
11 unknown to the grand jury, were members of a group referred to
12 herein as the Randallstown/Park Heights organization, a criminal
13 organization which operated in Baltimore, Baltimore County,
14 Pennsylvania, and elsewhere, whose members engaged in the
15 distribution of controlled substances and committed acts of
16 violence, including conspiracy to commit murder, murder, armed
17 robbery, and home invasion robbery.

18 On or about December 12, 2000, Shakedown Entertainment
19 Limited was incorporated in Maryland. The resident agent was
20 Willie Mitchell. The business produced and promoted rap music
21 recordings and performances.

22 The Randallstown/Park Heights organization, including
23 its leadership, members, and associates constituted an enterprise
24 as defined by Sections 1961(4) and 1959(b)(2) of Title 18 United
25 States Code, that is, a group of individuals and an entity

associated in fact which engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

Purposes of the enterprise. Among the purposes of the enterprise were the following: Enriching the members and associates of the enterprise through, among other things, murder, armed robbery, home invasion robbery, and distribution of controlled substances, including cocaine base, commonly known as crack, cocaine, marijuana, and heroin; preserving and protecting the power, territory, and profits of the enterprise, and retaliating against other individuals and organizations through the use of intimidation, violence, threats of violence, murder, and murder for profit; promoting and enhancing the enterprise and its members' and associates' activities; maintaining and promoting the rap music business in which members and associates were involved, including Shakedown Entertainment Limited; preventing and obstructing the arrest and prosecution of members and associates through witness intimidation and disruption of court proceedings.

Methods and means of the enterprise. Among the means and methods by which the defendants and their associates conducted and participated in the affairs of the enterprise were the following. Members of the enterprise and their associates

1 committed, attempted to commit, and threatened to commit acts of
2 violence, including armed robbery, home invasion robbery, murder,
3 murder for profit, and witness intimidation, to protect and
4 expand the enterprise's criminal operations, retaliate against
5 other individuals and organizations, and to obstruct justice and
6 law enforcement.

7 Members of the enterprise and their associates promoted
8 a climate of fear in Baltimore area neighborhoods through
9 violence and threats of violence.

10 Members of the enterprise and their associates
11 trafficked in cocaine base, commonly known as crack, cocaine,
12 marijuana, and heroin, to obtain money.

13 Members of the enterprise made decisions, both by
14 mutual consent and by direction from its leaders.

15 The racketeering violation. From in or about 1994
16 through on or about August 18, 2006, in the State and District of
17 Maryland, the Commonwealth of Pennsylvania, the State of New
18 York, and elsewhere, Willie Mitchell, Shelton Harris, Shelly
19 Wayne Martin, and Shawn Gardner, defendants herein, together with
20 persons known and unknown to the grand jury, being persons
21 employed by and associated with the Randallstown/Park Heights
22 organization, an enterprise which engaged in and the activities
23 of which affected interstate and foreign commerce, did knowingly,
24 intentionally, and unlawfully combine, conspire, confederate, and
25 agree to violate Section 1962(c) of Title 18, United States Code,

1 that is, to conduct and participate directly and indirectly in
2 the conduct of the enterprise's affairs through a pattern of
3 racketeering activity, as that term is defined in Sections
4 1961(1) and (5) of Title 18, United States Code, and through the
5 commission of the acts set forth in Paragraph Seven below. It
6 was a part of the conspiracy that each defendant agreed that a
7 conspirator would commit at least two acts of racketeering
8 activity as listed below in Paragraph Seven in the conduct of the
9 affairs of the enterprise.

10 The pattern of racketeering activity. The pattern of
11 racketeering activity as defined in Sections 1961(1) and 1961(5)
12 of Title 18, United States Code, consisted of the following acts:

13 Racketeering act one: Murder and conspiracy to murder
14 Oliver McCaffity. The defendants named below committed the
15 following acts, either one of which alone constitutes
16 racketeering act one.

17 On or about February 27/28, 2002 in the State and
18 District of Maryland, Willie Mitchell, AKA Bo, and Shelton
19 Harris, AKA Rock, Little Rock, Hard Rock, defendants herein, did
20 feloniously, willfully and of deliberately premeditated malice
21 aforesought kill and murder Oliver McCaffity against the peace,
22 government and dignity of the State, thereby violating Maryland
23 common law and those sections of the Maryland Annotated Code.

24 On or about February 27/28, 2002, in the State and
25 District of Maryland, Willie Mitchell and Shelton Harris,

1 defendants, did knowingly, willfully and unlawfully combine,
2 conspire, confederate, and agree with each other and with others
3 known and unknown to feloniously, willfully and of deliberately
4 premeditated malice aforethought kill and murder Oliver McCaffity
5 against the peace, government and dignity of the State of
6 Maryland, thereby violating Maryland law.

7 Racketeering act two -- murder of Lisa Brown. On or
8 about the same dates listed above in the State and District of
9 Maryland, Willie Mitchell, Shelton Harris, did feloniously,
10 willfully, and of deliberately premeditated malice aforethought
11 kill and murder Lisa Brown against the peace, government and
12 dignity of the State of Maryland and in furtherance of the
13 defendants' conspiracy to murder Oliver McCaffity, thereby
14 violating Maryland common and statutory law.

15 Racketeering act three. Murder and conspiracy to
16 murder Darryl Wyche. The defendants named below committed the
17 following acts, either one of which alone constitutes
18 racketeering act three. On or about March 24th/25th, 2002, in
19 the State and District of Maryland, Willie Mitchell, Shelly Wayne
20 Martin, Shelton Harris, and Shawn Gardner, defendants herein, did
21 feloniously, willfully, and of deliberately premeditated malice
22 aforethought kill and murder Darryl Wyche and did murder Darryl
23 Wyche during the perpetration of robbery against the peace,
24 government and dignity of the State of Maryland, thereby
25 violating Maryland common and statutory law.

1 On or about March 24/25, 2002, in the State and
2 District of Maryland, those same defendants did knowingly,
3 willfully, and unlawfully combine, conspire, confederate and
4 agree with each other, and with other persons known and unknown,
5 to feloniously, willfully, and of deliberately premeditated
6 malice aforethought kill and murder Darryl Wyche and to murder
7 Darryl Wyche in the perpetration of robbery again the peace,
8 government and dignity of the State of Maryland, thereby
9 violating Maryland common law and statutory law.

10 Racketeering act four -- murder and conspiracy to
11 murder Anthony Wyche. The defendants named below committed the
12 following acts, either one of which alone constitutes
13 racketeering act four. On or about March 24/25, 2002, all four
14 of the defendants named did feloniously, willfully, and of
15 deliberately premeditated malice aforethought kill and murder
16 Anthony Wyche and did murder Anthony Wyche during the
17 perpetration of robbery, against the peace, government and
18 dignity of the State of Maryland, thereby violating Maryland
19 common law and statutory law.

20 On or about those same dates, March 24/25, 2002, those
21 same four defendants did knowingly, willfully, and unlawfully
22 combine, conspire, confederate and agree with each other, and
23 with others known and unknown, to feloniously, willfully and of
24 deliberately premeditated malice aforethought kill and murder
25 Anthony Wyche and to murder Anthony Wyche in the perpetration of

1 robbery again the peace, government, and dignity of Maryland,
2 thereby violating Maryland common law and statutory law.

3 Racketeering act five -- armed robbery of Darryl and
4 Anthony Wyche. On or about the same dates mentioned above, those
5 same four defendants did feloniously rob Darryl Wyche and Anthony
6 Wyche of property with a dangerous or deadly weapon, contrary to
7 the form of the act of assembly in such case made and provided
8 and against the peace, government and dignity of the State of
9 Maryland, thereby in violation of Maryland common and statutory
10 law.

11 Racketeering act six -- murder of Tonya Jones Spence.
12 On or about June 7, 2002, in the State and District of Maryland,
13 Shawn Gardner, AKA Goo, defendant herein, did feloniously,
14 willfully and of deliberately premeditated malice aforethought
15 kill and murder Tonya Jones Spence and did murder Tonya Jones
16 Spence during the perpetration of robbery, against the peace,
17 government and dignity of the State of Maryland, thereby
18 violating Maryland common and statutory law.

19 Racketeering act seven -- armed robbery of Tonya Jones
20 Spence. On or about June 7, 2002 in the State and District of
21 Maryland, the same defendant, Mr. Gardner, did feloniously rob
22 and attempt to rob Tonya Jones Spence of property with a
23 dangerous or deadly weapon, contrary to the form of the act of
24 assembly in such case made and provided and against the peace,
25 government and dignity of the State of Maryland, thereby

1 violating Maryland common law and statutory law.

2 Racketeering act eight -- conspiracy to murder Darius
3 Spence. From in or about May, 2002 to on or about June 7, 2002,
4 in the State and District of Maryland, Shawn Gardner, a
5 defendant, did knowingly, willfully and unlawfully combine,
6 conspire, confederate and agree with others known and unknown to
7 feloniously, willfully, and of deliberately premeditated malice
8 aforethought kill and murder Darius Spence and to murder Darius
9 Spence in the perpetration of robbery against the peace,
10 government and dignity of the State of Maryland, thereby in
11 violation of Maryland common and statutory law.

12 Racketeering act nine -- drug trafficking. From in or
13 about 1994 through in or about February, 2004, in the State and
14 District of Maryland and elsewhere, Willie Mitchell, Shelton
15 Harris, Shelly Wayne Martin and Shawn Gardner, defendants, did
16 knowingly, willfully, and unlawfully conspire with each other and
17 with others known and unknown to the grand jury to knowingly,
18 intentionally and unlawfully distribute 50 grams or more of a
19 mixture or substance containing cocaine base, commonly known as
20 crack, a Schedule II controlled substance, five kilograms or more
21 of a mixture or substance containing cocaine hydrochloride, a
22 Schedule II controlled substance, a quantity of a mixture or
23 substance containing heroin, a Schedule I controlled substance,
24 and a quantity of a mixture or substance containing marijuana, a
25 Schedule I controlled substance, in violation of Title 21, United

1 States Code Section 841(a).

2 The defendants are charged here with violating Section
3 1962(d), that is in Count One of the indictment, of Title 18 of
4 the United States Code. That section of the law reads as
5 follows: It shall be unlawful for any person to conspire to
6 violate any of the provisions of Subsections A, B or C of this
7 section.

8 The word "racketeering" has certain implications in our
9 society. Use of that term in this statute and in this courtroom
10 should not be regarded as having anything to do with your
11 determination of whether the guilt of this defendant has been
12 proven. The word is only a term used by Congress to describe the
13 statute.

14 In order to prove the defendants, to prove the
15 defendants violated the RICO conspiracy statute, the government
16 must establish beyond a reasonable doubt each of the following
17 elements: First, that an enterprise existed as alleged in the
18 indictment; second, that the enterprise affected interstate or
19 foreign commerce; third, that the defendant was associated with
20 or employed by the enterprise; and fourth, that the defendant
21 knowingly and wilfully became a member of the conspiracy.

22 The first element the government must prove beyond a
23 reasonable doubt is that an enterprise existed as alleged in the
24 indictment. Under the statute, an enterprise which is described
25 here as the Randallstown/Park Heights organization, may consist

1 of a group of individuals who are associated together for a
2 common purpose of engaging in a course of conduct over a period
3 of time.

4 In addition to having a common purpose, this group of
5 individuals must have an ongoing organizational structure, either
6 formal or informal, and it must have personnel who function as a
7 continuing unit.

8 This group of individuals does not have to be a legally
9 recognized entity, such as a formal partnership or a legally
10 formed corporation. The group may be organized for a legitimate
11 and lawful purpose or it may be organized for an unlawful
12 purpose. Shakedown Entertainment Limited was a Maryland
13 corporation and thus a formal legal organization. However,
14 Shakedown Entertainment Limited is charged to be affiliated with
15 the enterprise, namely, the alleged Randallstown/Park Heights
16 organization. It is not the enterprise that is charged in this
17 indictment, in other words.

18 Again, and specifically, the indictment charges the
19 following enterprise existed: At various times relevant to this
20 fourth superseding indictment, Willie Mitchell, Shelton Harris,
21 Shelly Wayne Martin, and Shawn Gardner, along with others known
22 and unknown to the grand jury, were members of a group referred
23 to herein as the Randallstown/Park Heights organization, a
24 criminal organization which operated in Baltimore, Baltimore
25 County, Pennsylvania, and elsewhere, whose members engaged in the

1 distribution of controlled substances and committed acts of
2 violence, including conspiracy to commit murder, murder, armed
3 robbery, and home invasion robbery.

4 On or about December 12, 2000, Shakedown Entertainment
5 Limited was incorporated in Maryland. The resident agent was
6 Willie Mitchell. The business produced and promoted rap music
7 recordings and performances. The Randallstown/Park Heights
8 organization, including its leadership, members and associates
9 constituted an enterprise as defined by federal law, that is a
10 group of individuals and an entity associated in fact which
11 engaged in and the activities of which affected interstate and
12 foreign commerce. The enterprise constituted an ongoing
13 organization whose members functioned as a continuing unit for a
14 common purpose of achieving the objectives of the enterprise.

15 Among the purposes of the enterprise were enriching the
16 members and associates of the enterprise through, among other
17 things, murder, armed robbery, home invasion robbery, and
18 distribution of controlled substances, including those listed in
19 Paragraph 4-A; preserving and protecting the power, territory,
20 and profits of the enterprise, and retaliating against other
21 individuals and organizations through the use of intimidation,
22 violence, threats of violence, murder, and murder for profit;
23 promoting and enhancing the enterprise and its members and
24 associates' activities; maintaining and promoting the rap music
25 business in which members and associates were involved, including

1 Shakedown Entertainment, its members and associates; preventing
2 and obstructing the arrest and prosecution of members and
3 associates through witness intimidation and disruption of court
4 proceedings.

5 Among the means and methods by which the defendants and
6 their associates conducted and participated in the affairs of the
7 enterprise were members of the enterprise and their associates
8 committed, attempted to commit, and threatened to commit acts of
9 violence, including armed robbery, murder, murder for profit,
10 witness intimidation, to protect and expand the enterprise's
11 criminal activities, criminal operations, retaliate against other
12 individuals and organizations, and to obstruct justice and law
13 enforcement; members of the enterprise and their associates
14 promoted a climate of fear in Baltimore; members of the
15 enterprise and their associates trafficked in narcotics; and
16 members of the enterprise made decisions, both by mutual consent
17 and by direction from its leaders.

18 If you find that there was a group of individuals and
19 that that group was characterized by a common purpose, an ongoing
20 formal or informal organization, and by personnel who functioned
21 as a continuing unit, then you may find that an enterprise
22 existed.

23 If you find that the enterprise existed, then you must
24 also determine whether this enterprise continued in an
25 essentially unchanged form during substantially the entire period

1 charged in Count One of the indictment. This does not mean that
2 everyone involved has to be the same, but the core group of
3 individuals comprising the enterprise has to be the same
4 throughout.

5 Now, the second element the government must prove
6 beyond a reasonable doubt is that the enterprise engaged in or
7 had an effect on interstate or foreign commerce. Interstate
8 commerce includes the movement of goods, services, money, and
9 individuals between the states or between the United States and a
10 foreign state or nation.

11 The government must prove that the enterprise engaged
12 in or affected interstate commerce in any way, no matter how
13 minimal. It does not have to prove that racketeering activity
14 affected interstate commerce, although proof that racketeering
15 acts did affect interstate commerce is sufficient to satisfy this
16 element.

17 It is not necessary to prove that the acts of any
18 particular defendant affected interstate commerce, as long as the
19 acts of the enterprise had such an effect.

20 Finally, the government is not required to prove that
21 any defendant knew he was affecting interstate or foreign
22 commerce.

23 The third element that the government must prove beyond
24 a reasonable doubt is that the defendant was associated with or
25 was employed by the enterprise. It is not required that the

1 defendant have been associated with or employed by the enterprise
2 for the entire time that the enterprise existed. It is required,
3 however, that the government prove beyond a reasonable doubt that
4 at some time during the period charged in the indictment the
5 defendant in question was associated with or was employed by the
6 enterprise.

7 A person cannot be associated with or employed by an
8 enterprise if he does not know of the enterprise's existence or
9 the nature of its activities. Thus, in order to prove this
10 element, the government must prove beyond a reasonable doubt that
11 the defendant was connected to the enterprise in some meaningful
12 way and that the defendant knew of the existence of the
13 enterprise and of the general nature of its activities.

14 Now on Page 42, ladies and gentlemen.

15 The fourth element of the government must prove beyond
16 a reasonable doubt is that the defendant knowingly and willfully
17 became a member of the conspiracy. This means that in order to
18 meet its burden of proof, the government must show that the
19 defendant agreed to participate directly or indirectly in the
20 affairs of the enterprise through a pattern of racketeering
21 activity.

22 The focus of this element is on the defendant's
23 agreement to participate in the achievement of the objectives of
24 the enterprise to engage in a pattern of racketeering activity
25 and not on the defendant's agreement to commit the individual

1 criminal acts. The government must prove that the defendant
2 participated in some manner in the achievement of the overall
3 objectives of the conspiracy and that the conspiracy involved or
4 would have involved the commission of two racketeering acts. The
5 government is not required to prove either that the defendant
6 agreed to commit two racketeering acts or that he actually
7 committed two racketeering acts, although you may conclude that
8 he agreed to participate in the conduct of the enterprise through
9 proof that he agreed to commit or actually committed racketeering
10 acts.

11 For the purposes of Count One, the government must
12 prove that at least two of the nine racketeering acts alleged in
13 Count One were or were intended to be committed as part of the
14 conspiracy, although it need not prove that any defendant
15 committed or agreed to commit any of these acts so long as the
16 government proves that the defendant participated in some manner
17 in the achievement of the overall objectives of the conspiracy.

18 As I previously instructed you, this is a federal
19 prosecution. Nevertheless, many of the federal charges in this
20 indictment refer to and incorporate to some degree, violations of
21 the criminal law of the State of Maryland. You have heard some
22 evidence concerning the outcomes of prior state prosecutions. In
23 some instances a witness remembered the particular outcome and in
24 some circumstances they did not recall the particular outcome.
25 In some instances, you heard references to testimony given at a

1 prior proceeding or trial, but there was no inquiry concerning
2 the outcome.

3 You are not to speculate about the purpose or outcome
4 of any prior proceedings and must reach your decision in this
5 case by evaluating the evidence in this case to determine whether
6 the government has proven each and every element of each offense
7 beyond a reasonable doubt.

8 Under our system of government, both the federal
9 government and the state government may undertake a criminal
10 prosecution for the same general underlying conduct if the
11 underlying conduct constitutes a crime under both state and
12 federal law.

13 Under this dual sovereignty doctrine, the federal
14 government can bring federal criminal charges even if state
15 prosecutors may have previously prosecuted the same general
16 underlying conduct under state law. Moreover, the federal
17 government's decision to go forward with a federal prosecution is
18 based on a variety of factors and it is not dependent on a
19 particular result, if any, of a prior prosecution. Indeed,
20 federal prosecutions often are authorized even after a state
21 prosecution has resulted in a conviction.

22 Even though the charges may sound similar and there may
23 be significant overlap of elements, the federal charges often
24 require proof of several elements that are not a part of any
25 state prosecution.

1 In addition, whether or not the State of Maryland has
2 previously prosecuted some of the alleged criminal acts that you
3 have heard about during this case, your verdict in this case will
4 have no legal effect on whether the State of Maryland determines
5 to bring a state prosecution after this case.

6 Most of the racketeering acts charged in Count One
7 allege violations of federal law and are also charged as separate
8 counts in the indictment. I will explain the elements of these
9 federal offenses later when I cover the separate counts.

10 Several of the charged racketeering acts are violations
11 of state law -- conspiracy, murder, assault, and armed robbery.
12 In order for a state offense to be considered a racketeering act,
13 the government must prove beyond a reasonable doubt that the
14 state offense was committed as defined by Maryland law.

15 The elements of the state offenses as defined in
16 Maryland law are as follows: Racketeering act one. Racketeering
17 Act One of Count One of the indictment charges the defendants
18 Willie Mitchell and Shelton Harris with the murder of and
19 conspiracy to murder Oliver McCaffity. That racketeering act
20 reads as follows:

21 On or about February 27/28, 2002 in the State and
22 District of Maryland, Willie Mitchell and Shelton Harris,
23 defendants, did feloniously, willfully and of deliberately
24 premeditated malice aforethought kill and murder Oliver McCaffity
25 against the peace, government, and dignity of the state. That is

1 Racketeering Act 1(a).

2 Under the law of Maryland, first degree murder is
3 defined as the intentional killing of another individual, of
4 another person with willfulness, deliberation and premeditation.
5 Second degree murder is the killing of another person with either
6 the intent to kill or the intent to inflict such serious bodily
7 harm that death would be the likely result. Second degree murder
8 does not require premeditation or deliberation.

9 The government must prove that the conduct of the named
10 defendants caused the death of Oliver McCaffity and that the
11 defendant engaged in the deadly conduct either with the intent to
12 kill or the intent to inflict such serious bodily harm that death
13 would be the likely result.

14 You may find that Racketeering Act 1(a) was committed
15 if you find beyond a reasonable doubt that either first degree
16 murder or second degree murder was committed by one or both of
17 the defendants named in Racketeering Act One.

18 Willful means that a defendant actually intended to
19 kill the victim. Deliberate means that the defendant was
20 conscious of the intent to kill. Premeditated means that the
21 defendant thought about the killing and that there was time,
22 though it need only have been brief, for the defendant to form
23 the intent to kill.

24 Now, Racketeering Act One also charges the same two
25 defendants with the additional crime of conspiring with each

1 other to murder Oliver McCaffity. If the defendants committed
2 this offense or the offense charged in Racketeering Act 1(a), you
3 may find that Racketeering Act 1(a) was committed.

4 Racketeering Act 1(b) reads: On or about those same
5 dates, February 27/28, 2002, those defendants, Mr. Mitchell and
6 Mr. Harris, did knowingly, willfully and unlawfully conspire,
7 confederate and agree with each other, and with others known and
8 unknown, to feloniously, willfully and of deliberately
9 premeditated malice aforethought kill and murder Oliver McCaffity
10 against the peace, government and dignity of the state, in
11 violation of state law.

12 Under the laws of Maryland, conspiracy is an agreement
13 between two or more persons to commit a crime. In order to
14 convict the defendant of conspiracy to commit murder, the
15 government must prove, one, that the defendant entered into an
16 agreement with at least one other person to commit the crime of
17 murder; and two, that the defendant that the defendant entered
18 into the agreement with the intent that the murder be committed.

19 I previously instructed you on the definitions of first
20 and second degree murder under the laws of Maryland. Note that
21 conspiracy is a distinct crime. Conspiracy focuses on the
22 existence of an illegal agreement and the defendant's entry into
23 that agreement. Conspiracy does not require proof that any
24 defendant murdered the victim or even that he took a substantial
25 step to murder the victim.

1 Return now to Racketeering Act Two. Racketeering Act
2 Two charges the defendants Willie Mitchell and Shelton Harris
3 with the murder of Lisa Brown. That racketeering act reads: On
4 or about the same date previously mentioned, February 27/28,
5 2002, in this State and District, those defendants, Mr. Mitchell,
6 Mr. Harris, did feloniously, willfully and of deliberately
7 premeditated malice aforethought kill and murder Lisa Brown
8 against the law of Maryland and in furtherance of the defendants'
9 conspiracy to murder Oliver McCaffity.

10 I previously instructed you on the definitions of first
11 and second degree murder under the laws of Maryland and I
12 previously instructed you as to the definition of the law of
13 conspiracy as well.

14 Racketeering Act Three reads as follows. Excuse me.
15 Racketeering Act 3(a) of Count One of the indictment charges all
16 four of the defendants with the murder of Darryl Wyche, and
17 Racketeering Act 3(b) charges the same defendants with conspiracy
18 to murder Darryl Wyche.

19 If you find beyond a reasonable doubt that one of these
20 defendants committed this murder or that one of these defendants
21 conspired with at least one other person to commit this murder,
22 that is the murder of Darryl Wyche, then Racketeering Act Three
23 was committed.

24 Racketeering Act Three reads as follows: The
25 defendants named below committed the following acts, either one

1 of which alone constitutes Racketeering Act Three: On or about
2 March 24/25, 2002, in the State and District of Maryland, all
3 four defendants, Mr. Mitchell, Mr. Harris, Mr. Martin, and Mr.
4 Gardner, did feloniously, willfully, and of deliberately
5 premeditated malice aforethought kill and murder Darryl Wyche and
6 did murder Darryl Wyche during the perpetration of robbery,
7 against the laws of Maryland. And then(b), on or about March
8 24/25, 2002, in this State and District, those same four
9 defendants did knowingly, wilfully, and unlawfully combine,
10 conspire, confederate and agree with each other, and with others
11 known and unknown, to feloniously, willfully and of deliberately
12 premeditated malice aforethought kill and murder Darryl Wyche and
13 to murder Darryl Wyche in the perpetration of robbery, against
14 the peace, government and dignity of the State of Maryland,
15 thereby violating Maryland common and statutory law.

16 I previously instructed you on the definitions of first
17 and second degree murder and conspiracy to commit murder under
18 the laws of Maryland in connection with Racketeering Act One.

19 Racketeering Act Four concerns the murder of Anthony
20 Wyche. Racketeering Act Four of Count One of the indictment
21 charges all four defendants with the murder of Anthony Wyche, and
22 Racketeering Act 4(b) charges the same defendants with conspiracy
23 to murder Anthony Wyche.

24 Again, if you find beyond a reasonable doubt that one
25 of these defendants committed this murder or that one of these

1 defendants conspired with at least one other person to commit
2 this murder, then Racketeering Act Three was committed.

3 And as you can see, ladies and gentlemen, there's a
4 typo there on Page 49. That should read Racketeering Act Four,
5 is what we're discussing here.

6 The defendants named below committed the following
7 acts, either one of which alone constitutes Racketeering Act
8 Four:

9 On or about March 24/25, 2002, in the State and
10 District of Maryland, all four defendants did feloniously,
11 willfully, and of deliberately premeditated malice aforethought
12 kill and murder Anthony Wyche and did murder Anthony Wyche during
13 the perpetration of robbery, against the law of Maryland.

14 And then Racketeering Act 4(b) reads, on or about March
15 24/25, 2002, in the State and District of Maryland, all four
16 named defendants did knowingly, willfully and unlawfully combine,
17 conspire, confederate and agree with each other, and with others
18 known and unknown, to feloniously, willfully, and of deliberately
19 premeditated malice aforethought kill and murder Anthony Wyche
20 and to murder Anthony Wyche in the perpetration of robbery,
21 against the law of Maryland.

22 I previously instructed you on the definitions, of
23 course, of first and second degree murder and conspiracy to
24 commit murder, and those same definitions apply here.

25 Racketeering Act Five charges all four defendants with

1 violating the state law against armed robbery. Racketeering Act
2 Five reads: On or about March 24/25, 2002, all four defendants
3 did feloniously rob Darryl Wyche and Anthony Wyche of property
4 with a dangerous or deadly weapon, contrary to the form of the
5 act of assembly, in such case made and provided, and against the
6 peace, government and dignity of the state, thereby violating
7 Maryland common law and statutory law.

8 Robbery is the taking and carrying away of property
9 from someone else's presence and control by force, with the
10 intent to deprive the victim of the property. In order to
11 convict the defendant of armed robbery, the government must prove
12 the following elements beyond a reasonable doubt: One, that the
13 defendant took the property from the victim's presence and
14 control; two, that the defendant took the property by force or
15 threat of force; three, that the defendant intended to deprive
16 the victim of the property; and four, that the defendant
17 committed the robbery by using a dangerous weapon.

18 Property means anything of value.

19 A dangerous weapon is an object that is capable of
20 causing death or serious bodily harm.

21 To deprive means to withhold property of another
22 permanently for such period as to appropriate a portion of its
23 value, with the purpose of restoring it only upon payment of a
24 reward or other compensation or to dispose of the property and
25 use or deal with the property so as to make it unlikely that the

1 owner will recover it.

2 Racketeering Act Six charges the defendant Shawn
3 Gardner alone with the murder of Tonya Jones Spence. It reads:
4 On or about June 7, 2002, in the State and District of Maryland,
5 Shawn Gardner, AKA Goo, defendant, did feloniously, willfully,
6 and of deliberately premeditated malice aforethought kill and
7 murder Tonya Jones Spence and did murder Tonya Jones Spence
8 during the perpetration of robbery, against the peace,
9 government, and dignity of the state, thereby violating Maryland
10 common law and statutory law.

11 I previously instructed you on the definitions of first
12 and second degree murder under the laws of Maryland.

13 Racketeering Act Seven charges the defendant, Shawn
14 Gardner, with violating the state law against armed robbery. It
15 reads: On or about the same date, June 7, 2002, defendant did
16 feloniously rob and attempt to rob Tonya Jones Spence of property
17 with a dangerous or deadly weapon, contrary to the form of the
18 act of assembly, in such case made and provided, and against the
19 peace, government and dignity of the state, thereby violating
20 Maryland common law and statutory law.

21 I previously instructed you on the law of armed robbery
22 in the State of Maryland.

23 Racketeering Act Eight charges the defendant, Mr.
24 Gardner, with conspiracy to murder Darius Spence. If Shawn
25 Gardner conspired with at least one other person to commit this

1 murder, you may find that Racketeering Act Eight was committed.

2 The allegations of that racketeering act read as
3 follows: From in or about May, 2002 to on or about June 7th,
4 2002, in the State and District of Maryland, Shawn Gardner, AKA
5 Goo, defendant, did knowingly, willfully and unlawfully combine,
6 conspire, confederate and agree with others known and unknown to
7 feloniously, willfully, and of deliberately premeditated malice
8 aforethought kill and murder Darius Spence and to murder Darius
9 Spence in the perpetration of robbery, against the peace,
10 government and dignity of the state, thereby violating Maryland
11 common and statutory law.

12 And I have previously instructed you on the law of
13 conspiracy.

14 Now, we move both to Racketeering Act Nine and Count
15 Eight of the indictment.

16 Racketeering Act Nine of Count One of the indictment
17 and Count Eight of the indictment are identical. They both
18 charge all four defendants with conspiracy to distribute crack,
19 cocaine, heroin and marijuana. I will now therefore charge you
20 on both.

21 Racketeering Act Nine and Count Eight read as follows:
22 From in or about 1994 through in or about February, 2004, in the
23 State and District of Maryland and elsewhere -- I believe that
24 that's a typo. I believe it should read February, 2006.

25 MR. HARDING: No.

1 THE COURT: No. I'm sorry. It's not a typo. I
2 apologize. The racketeering conspiracy is alleged to have lasted
3 from 1994 to 2006. The narcotics conspiracy alleged in Count
4 Eight and in Racketeering Count Nine uses the dates 1994 through
5 February, 2004.

6 From in or about 1994 through in or about February,
7 2004, in the State and District of Maryland and elsewhere, Willie
8 Mitchell, Shelton Harris, Shelly Wayne Martin, and Shawn Gardner,
9 defendants, did knowingly and willfully and unlawfully conspire
10 with each other and with others known and unknown to the grand
11 jury to knowingly, intentionally and unlawfully distribute 50
12 grams or more of a mixture or substance containing cocaine base,
13 commonly known as crack, a Schedule II controlled substance, five
14 kilograms or more of a mixture or substance containing cocaine
15 hydrochloride, a Schedule II controlled substance, a quantity of
16 a mixture or substance containing heroin, a Schedule I controlled
17 substance, and a quantity of a mixture or substance containing
18 marijuana, a Schedule I controlled substance, in violation of
19 Title 21, United States Code, Section 841.

20 Count Eight and Racketeering Act Nine are brought under
21 Section 846 of Title 21, which provides in pertinent part that
22 any person who conspires to commit any offense defined in this
23 subchapter has violated the criminal laws of the State of
24 Maryland.

25 Excuse me one moment, ladies and gentlemen. Ms.

1 Arrington, are we going to be alerted when lunch arrives? Okay.

2 You'll get a signal? Okay. Good.

3 You are instructed, ladies and gentlemen, that a
4 violation of Section 841(a)(1) of Title 21 is an offense defined
5 under this subchapter and that Section 841(a)(1) provides in
6 pertinent part that it shall be unlawful for any person knowingly
7 or intentionally to distribute, dispense, or possess with intent
8 to distribute or dispense a controlled substance.

9 You are instructed as a matter of law that crack
10 cocaine, cocaine, heroin and marijuana are controlled substances,
11 specifically Schedule I and Schedule II narcotics controlled
12 substances, as those terms are used in these instructions, the
13 indictment, and the statutes just read to you.

14 You must, of course, determine whether or not the
15 material in question was, in fact, crack cocaine, cocaine, heroin
16 or marijuana. In so doing, you may consider all evidence in the
17 case which may aid you in the determination of that issue,
18 including the testimony of any witnesses who may testify either
19 to support or to dispute the allegations that the material in
20 question was crack cocaine, cocaine, heroin or marijuana, or any
21 stipulation between the parties regarding the nature of the
22 substances.

23 The government may prove the material was crack
24 cocaine, cocaine, heroin or marijuana through either direct or
25 circumstantial evidence.

1 An example of direct evidence is the testimony of a
2 chemist who has done a chemical analysis of the material.
3 Circumstantial evidence would be evidence from which you could
4 infer that the material was cocaine or heroin, such as testimony
5 concerning the names used by the defendants to refer to the
6 material or testimony about the material's appearance. Whether
7 the government relies on direct or circumstantial evidence to
8 prove the material was cocaine or heroin, it must prove so beyond
9 a reasonable doubt.

10 In this case, the defendants are accused of conspiracy
11 to distribute or possess with the intent to distribute cocaine
12 and heroin, and we've left out there marijuana and crack cocaine.

13 A conspiracy is a kind of criminal partnership, a
14 combination or agreement of two or more persons to join together
15 to accomplish some unlawful purpose. The crime of conspiracy to
16 violate a federal law is an independent offense. It is separate
17 and distinct from the actual violation of any specific federal
18 laws which the law refers to as substantive crimes. Indeed, you
19 may find a defendant's guilty of the crime of conspiracy to
20 commit an offense against the United States even though the
21 substantive crime which was the object of the conspiracy was not
22 actually committed. Moreover, you may find a defendant guilty of
23 conspiracy despite the fact that he himself was incapable of
24 committing the substantive crime.

25 In order to satisfy its burden of proof on Count Eight

1 and Racketeering Act Nine, the government must establish each of
2 the following two essential elements beyond a reasonable doubt:
3 First, that two or more persons entered into the unlawful
4 agreement charged; and second, that the defendant knowingly
5 became a member of the conspiracy. As Count Eight and
6 Racketeering Act Nine charge a conspiracy involving the
7 distribution or possession with intent to distribute crack
8 cocaine, cocaine, heroin, and marijuana, definitions of
9 "distribute" and "possession" are in order.

10 The word "distribute" means to deliver a narcotic.
11 Deliver is defined as the actual, constructive or attempted
12 transfer of a narcotic. Simply stated, the words "distribute"
13 and "deliver" mean to pass on or to hand over to another or to
14 cause to be passed on or handed over to another, or to try to
15 pass on or hand over to another narcotics.

16 Distribution does not require a sale. Activities in
17 furtherance of the ultimate sale, such as vouching for the
18 quality of the drugs, negotiating for or receiving the price, and
19 supplying or delivering the drugs may constitute distribution.

20 In short, distribution requires a concrete involvement
21 in the transfer of the drugs.

22 The legal concept of possession may differ from the
23 everyday usage of the term so I will explain that term in some
24 detail.

25 Actual possession is what most of us think of as

1 possession. That is, having physical custody and control of an
2 object. For example, if you find that the defendant had the
3 drugs on his person, you may find that he had possession of the
4 drugs. However, a person need not have actual, physical custody
5 of an object in order to be in legal possession of it. If an
6 individual has the ability to exercise substantial control over
7 an object that he does not have in his physical custody, then he
8 is in possession of that item.

9 An example of this from everyday experience would be a
10 person's possession of items he keeps in a safe deposit box of
11 his bank. Although the person does not have physical custody of
12 those items, he exercises substantial control over them and so he
13 has what is known as constructive possession of them.

14 Possession of the drugs cannot be found solely on the
15 ground that a defendant was near or close to the drugs, nor can
16 it be found simply because a defendant was present at a scene
17 where drugs were involved or solely because a defendant
18 associated with a person who does control the drugs or the
19 property where the drugs were found. However, these factors may
20 be considered by you in connection with all other evidence in
21 making your decision whether a defendant conspired to possess
22 drugs.

23 The first element which the government must prove
24 beyond a reasonable doubt to establish the offense of conspiracy
25 is that two or more persons entered the unlawful agreement

1 charged in the indictment. In order for the government to
2 satisfy this element, you need not find that the alleged members
3 of the conspiracy met together and entered into any express or
4 formal agreement.

5 Similarly, you are not required, you need not find that
6 the alleged conspirators stated in words or writing what the
7 scheme was, its object or purpose, or every precise detail of the
8 scheme or the means by which its object or purpose was to be
9 accomplished. Indeed, it is sufficient for the government to
10 show that the conspirators tacitly came to a mutual understanding
11 to accomplish an unlawful act by means of a joint plan or common
12 design.

13 You may, of course, find that the existence of an
14 agreement to disobey or disregard the law has been established by
15 direct proof. However, since conspiracy is by its very nature
16 characterized by secrecy, you may also infer its existence from
17 the circumstances of this case and the conduct of the parties
18 involved.

19 In a very real sense, then, in the context of
20 conspiracy cases, actions often speak louder than words. In this
21 regard, you may, in determining whether an agreement existed
22 here, consider the actions and statements of all those you find
23 to be participants as proof that a common design existed on the
24 part of the person charged and his coconspirators to act together
25 for the accomplishment of an unlawful purpose.

1 Now, the second element which the government must prove
2 beyond a reasonable doubt to establish the offense of narcotics
3 conspiracy is that the defendants knowingly, willfully, and
4 voluntarily became members of the conspiracy. If you are
5 satisfied that the narcotics conspiracy charged in the indictment
6 existed, you must next ask yourselves who the members of the
7 conspiracy were.

8 In deciding whether the defendant whom you are
9 considering was in fact a member of the conspiracy, you should
10 consider whether the defendant knowingly and willfully joined the
11 conspiracy. Did he participate in it with knowledge of its
12 unlawful purpose and with the specific intention of furthering
13 its business or objective as an associate or worker?

14 In that regard, it has been said that in order for a
15 defendant to be deemed a participant in a conspiracy, he must
16 have had a stake in the venture or its outcome. You are
17 instructed that while proof of a financial interest in the
18 outcome of a scheme is not essential, if you find that the
19 defendant had such an interest, that is a factor which you may
20 properly consider in determining whether or not the defendant was
21 a member of the conspiracy charged in the indictment.

22 As I mentioned a moment ago, before the defendant can
23 be found to have been a conspirator, you must first find that he
24 knowingly joined in the unlawful agreement or plan. The key
25 question, therefore, is whether the defendant joined the

1 conspiracy with an awareness of at least some of the basic aims
2 and purposes of the unlawful agreement.

3 It is important for you to note that the defendant's
4 participation in the conspiracy must be established by
5 independent evidence of his own acts or statements and the
6 reasonable inferences which may be drawn from them.

7 A defendant's knowledge is a matter of inference from
8 the facts proved. In that connection, I instruct you that to
9 become a member of the conspiracy, a defendant need not have
10 known the identities of each and every member, nor need he have
11 been apprised of all of their activities. Moreover, a defendant
12 need not have been fully informed as to all of the details or the
13 scope of the conspiracy in order to justify an inference of
14 knowledge on his part. Furthermore, a defendant need not have
15 joined in all the conspiracy's unlawful objectives.

16 The extent of a defendant's participation has no
17 bearing on the issue of a defendant's guilt. A conspirator's
18 liability is not measured by the extent or duration of his
19 participation. Indeed, each member may perform separate and
20 distinct acts and may perform them at different times. Some
21 conspirators play major roles while others play minor parts in
22 the scheme. An equal role is not what the law requires. In
23 fact, even a single act may be sufficient to draw the defendant
24 within the ambit of the conspiracy.

25 I want to caution you, however, that a defendant's mere

1 presence at the scene of the alleged crime does not by itself
2 make him a member of the conspiracy. Similarly, mere association
3 with one or more members of the conspiracy does not automatically
4 make a defendant a member. A person may know or be friendly with
5 a criminal without being a criminal himself. Mere similarity of
6 conduct or the fact that they may have assembled together and
7 discussed common aims and interests does not necessarily
8 establish proof of the existence of a conspiracy.

9 I think I'm getting the sign that lunch is here.
10 That's the sign we were waiting for. Let me finish this part of
11 it, ladies and gentlemen. At the bottom of Page 60.

12 I also want to caution you that mere knowledge or
13 acquiescence, without participation, in the unlawful plan is not
14 sufficient. Moreover, the fact that the acts of a defendant,
15 without knowledge, merely happened to further the purposes or
16 objectives of the conspiracy does not make a defendant a member.
17 More is required under the law.

18 Excuse me. Belinda, I think you may be needed.

19 What is necessary is that the defendant must have
20 participated with knowledge of at least some of the purposes or
21 objectives of the conspiracy and with the intention of aiding in
22 the accomplishment of those objectives, of those unlawful ends.

23 In sum, the defendant, with an understanding of the
24 unlawful character of the conspiracy, must have intentionally
25 engaged, advised or assisted in it for the purpose of furthering

1 the illegal undertaking. He thereby becomes a knowing and
2 willing participant in the unlawful agreement; that is to say, a
3 conspirator.

4 If you'll indulge me, ladies and gentlemen, let me
5 complete the instruction relating to Racketeering Act Nine and
6 the narcotics conspiracy, approximately another page and a half,
7 and then I'll excuse you to have your lunch. I'm in the middle
8 of Page 61.

9 The conspiracy alleged in Count Eight and Racketeering
10 Act Nine of the indictment is alleged to have lasted from in or
11 about 1994 to on or about February, 2004. In this connection, I
12 instruct you that the government need only prove that the
13 particular conspiracy took place during a period of time
14 reasonably related to that alleged in the indictment, which may
15 include a period of time outside or less than the dates charged.

16 Furthermore, with respect to the charge that the
17 offense took place in the State and District of Maryland, you are
18 instructed that the government need only prove that an act
19 committed by any member of the conspiracy in furtherance of the
20 conspiracy charged in the indictment occurred in Maryland for the
21 defendants to be charged in Maryland.

22 If you find that the government has proven each of the
23 elements of the charged narcotics conspiracy beyond a reasonable
24 doubt, then you must determine beyond a reasonable doubt what
25 types and quantities of narcotics were distributed and/or

1 possessed with the intent to distribute as part of the
2 conspiracy. To assist you in this, I will provide you with a
3 verdict sheet that will ask you to answer certain questions about
4 the types and quantities of narcotics in the conspiracy in Count
5 Eight and Racketeering Act Nine.

6 If you find that the controlled substance involved in
7 this case is cocaine base or crack cocaine and/or powder cocaine,
8 you must next determine the amount of crack cocaine and/or powder
9 cocaine that was involved in the conspiracy. Furthermore, if you
10 find that the government has proven any defendant guilty of the
11 conspiracy charged in Count Eight, that is that the alleged
12 conspiracy existed and that the defendant knowingly and
13 intentionally became a member of the conspiracy, then you must
14 determine what type and quantity of controlled substances are
15 attributable to that particular defendant.

16 In determining what type and quantity of controlled
17 substance is attributable to a particular defendant, you should
18 consider the following factors. First, a defendant is
19 accountable for any type and quantity of drugs which he
20 personally distributed or possessed with intent to distribute.

21 Second, a defendant is also accountable for any type
22 and quantity of drugs which he attempted to or planned to
23 distribute or possess with intent to distribute. Specifically, a
24 defendant is accountable for those drugs even if those drugs were
25 never actually obtained or distributed, so long as an objective

1 of the conspiracy was for the defendant to distribute or possess
2 with intent to distribute such a type and quantity of drugs.

3 Third, a defendant is also accountable for any type and
4 quantity of drugs which another member of the conspiracy
5 distributed or possessed with intent to distribute as part of the
6 conspiracy so long as it was reasonably foreseeable to the
7 defendant that such a type and quantity of drugs would be
8 involved in the conspiracy which he joined.

9 Fourth, a defendant is also accountable for any type
10 and quantity of drugs which another member of the conspiracy
11 attempted to or planned to distribute or possess with intent to
12 distribute so long as it was reasonably foreseeable to the
13 defendant that such a type and quantity of drugs would be
14 involved in the conspiracy which he joined. A defendant is
15 accountable for those drugs even if those drugs were never
16 actually obtained or distributed by other members of the
17 conspiracy so long as an objective of the conspiracy was for the
18 other members of the conspiracy to distribute or possess with
19 intent to distribute such a type and quantity of drugs.

20 The last two rules apply even if the defendant did not
21 personally participate in the acts or plans of his coconspirators
22 or even if the defendant did not have actual knowledge of those
23 acts or plans so long as those acts or plans were reasonably
24 foreseeable to the defendant. The reason for this, as I have
25 instructed you, is simply that a coconspirator is deemed to be

1 the agent of all other members of a conspiracy. Therefore, all
2 of the coconspirators bear criminal responsibility for acts or
3 plans that are undertaken to further the goals of the conspiracy.

4 Recall that the government must prove that at least two
5 of the nine racketeering acts alleged in Count One were or were
6 intended to be committed as part of the RICO conspiracy, although
7 it need not prove that any defendant committed or agreed to
8 commit any of these acts so long as the government proves that
9 the defendant participated in some manner in the overall
10 objective of the conspiracy.

11 Members of the jury, we will now take a luncheon
12 recess, I will say an abbreviated luncheon recess, with your
13 indulgence. Lunch should be waiting for you in the jury room. I
14 thought Ms. Arrington would be back by now but she's not. But
15 I'm sure she'll be rejoining us. Once again, she manages to come
16 and go without my noticing.

17 All the lunches are in the jury room, Ms. Arrington?
18 The jury is pleased to hear that.

19 I'm going to limit lunch, with your indulgence, to 45
20 minutes. And during lunch, for those of you who wish to get some
21 fresh air, please feel free to step outside. But I hope you
22 don't have an errand, such as going to the bank or something that
23 will require you to stand in line, because I'd like you to be
24 back in the jury room in 45 minutes, ready to continue.

25 It is now, by the clock of the courtroom, three minutes

1 of one. So I'm going to ask you to be back in the jury room by
2 1:45. I will complete my instructions. And I do believe that
3 you will have some time today to begin your deliberations. But
4 we'll see whether that's so and, if so, how many time. But I
5 think you will have some time to begin your deliberations.

6 But we aren't at that point yet. You haven't heard all
7 of my instructions. So my interim instruction remains as it has
8 always been. Please leave your note pads and your copies of the
9 instructions on your chairs. Have no discussion whatsoever about
10 the case or about the evidence or my instructions during your
11 lunch. I know the temptation's going to be very strong to begin
12 your deliberations because I've instructed you on some counts,
13 but it's important for you to hear all of my instructions before
14 you begin your deliberations.

15 And I will also say, you have the pleasure of the
16 company of our alternate jurors for lunch. They will not be
17 permitted to be in the jury room once you begin your
18 deliberations. So it would be improper for you to begin your
19 deliberations while they're in there. Not that -- that's the
20 law. I'm not ordering that. It's the law. So it's important
21 that you not begin your deliberations and that you have no
22 discussion about the case during your deliberations.

23 So the jury's excused for lunch and for a brief step
24 outside if you want. But please be back in the jury room 45
25 minutes from now, at 1:45.

1 (Jury exits the courtroom.)

2 THE COURT: The reason I'm laughing, counsel, one of
3 the jurors, who shall remain unidentified, on his menu selection
4 included Amstel Light. I want to assure counsel and the parties
5 that that particular menu item was not delivered and that there's
6 no alcoholic beverages in the jury room.

7 MR. KURLAND: Where's the food from?

8 THE COURT: Across the street, up the street. Sorry to
9 limit your choices. I should have warned you, counsel, to bring
10 your lunch. But we're in recess for 45 minutes, until 1:45.

11 (Luncheon recess at 1 p.m.)

12 MR. HARDING: Judge, I'm sorry. The laptop that the
13 court provided is not, in fact, a blank laptop. It's got other
14 stuff on it, including, got internet access on it. It's got
15 music on it. It's got various things. I asked Belinda to see if
16 the IT guy could come down because all we want, I assume, are the
17 files in this case.

18 THE COURT: Well, first of all, it's not going to have
19 internet access. There's not wireless access in this courtroom.

20 MR. HARDING: It's got internet explorer.

21 THE COURT: Oh, yeah, it's got the software but they're
22 not going to be able to connect to the Internet. And I'll
23 instruct them, of course, that they are not to use the laptop for
24 any purpose other than reviewing the evidence.

25 MR. HARDING: There are eight --

1 THE COURT: When I use the term "clean laptop", I
2 meant, you know, it shouldn't be a government laptop with
3 unredacted exhibits and that kind of thing. But, you know, I
4 don't mind that there are, there's the standard software that the
5 court puts on laptops. I think it will be okay.

6 MR. HARDING: Good some music on it.

7 THE COURT: They may need some. Is it Beethoven or
8 Brahms?

9 MR. HARDING: Actually, it had Beethoven's Ninth
10 Symphony. I just played it a moment ago.

11 THE COURT: There you go. There you go. I think
12 that's fine. But I'll instruct them that they are not to play
13 with the laptop.

14 MR. HARDING: Also, Your Honor, just for the Court's
15 information, this CD, this DVD of the, of the assault upstairs
16 could not be loaded on to the computer. My office is willing to
17 donate this DVD player, which will play this.

18 THE COURT: Okay. Great. Thank you, Mr. Harding. All
19 right. We're ready, I think.

20 (Jury enters the courtroom.)

21 THE COURT: Good afternoon, ladies and gentlemen of the
22 jury. We'll resume my instructions on Page 64.

23 I want to assure you that, despite appearances, that is
24 being only on Page 64 with 124 total pages in your looseleaf, we
25 are well beyond 50% finished. So I don't want you to think we're

1 only halfway through. We're much better than halfway through.

2 And I will avoid repetition. As you probably noticed,
3 in some of my earlier instructions, I simply summarized certain
4 aspects so as not to have to repeat myself, although they are
5 repeated in the written instructions.

6 So we move on, then, to Counts 2, 4, 5, 6 and 7. Count
7 2, 4, 5, 6 and 7 of the indictment charge the defendants with
8 violent crimes in aid of racketeering. The statute is Section
9 1959 of Title 18, reads as follows: Whoever, as consideration
10 for receipt of, or as consideration for a promise or agreement to
11 pay, anything of pecuniary value from an enterprise engaged in
12 racketeering activity or for the purpose of gaining entrance to
13 or maintaining or increasing position in an enterprise engaged in
14 racketeering activity, murders any individual in violation of the
15 laws of any state or the United States or attempts or conspires
16 to do so shall be guilty of a crime.

17 Section 1959, which is often referred to as the VICAR
18 statute, standing for Violent Crimes in Aid of Racketeering, was
19 first enacted in 1984. There's a close relationship between
20 Section 1959 and the RICO provisions I mentioned earlier, and
21 many of the concepts involved in VICAR cases, such as the
22 definitions of enterprise and racketeering activity have the same
23 meaning as in RICO cases.

24 Defendants Mitchell and Harris are charged in Count Two
25 of the indictment with the murder of Oliver McCaffity in aid of a

1 racketeering enterprise.

2 Count Two reads as follows: The grand jury for the
3 District of Maryland charges, Paragraphs One Through Five as set
4 forth in Count One are incorporated herein by reference. From in
5 or about 1994 through on or about August 18th, 2006, the
6 Randallstown/Park Heights organization, an enterprise, through
7 its members and associates, engaged in racketeering activity as
8 defined under federal law, namely, conspiracy to distribute
9 controlled substances in violation of federal law, witness
10 retaliation in violation of federal law, armed robbery, and
11 murder.

12 On or about February 27/28, 2002, in the State and
13 District of Maryland, for the purpose of gaining entrance to and
14 maintaining and increasing their positions in the
15 Randallstown/Park Heights organization, and as consideration for
16 the receipt of and for a promise or agreement to pay a thing of
17 pecuniary value from the Randallstown/Park Heights organization,
18 an enterprise engaged in racketeering activity, Willie Mitchell,
19 AKA Bo, and Shelton Harris, AKA Rock, Little Rock, Hard Rock,
20 defendants herein, feloniously, willfully, and of deliberately
21 premeditated malice aforethought did kill and murder Oliver
22 McCaffity against the peace, government and dignity of the State
23 of Maryland, of the state, in violation of Maryland common law
24 and Article 27, Section 407 and 411 of the Annotated Code of
25 Maryland.

Defendants Mitchell and Harris are charged in Count Four with the murder of Lisa Brown, in aid of racketeering. Count Four reads as follows in pertinent part. Again, Paragraphs One Through Five are incorporated, that is Paragraphs One Through Five from Count One are incorporated by reference into Count Five.

On or about February 27, 2000 -- February 27/28, 2002,
in this state and district, for the purpose of gaining entrance
to and maintaining and increasing their positions in the
Randallstown/Park Heights organization, and as consideration for
the receipt of, and for a promise or agreement to pay, a thing of
pecuniary value, from the Randallstown/Park Heights organization,
an enterprise engaged in racketeering activity, Mr. Mitchell, Mr.
Harris, defendants, feloniously, willfully, and of deliberately
premeditated malice aforethought, did kill and murder Lisa Brown,
and so on.

Next is Count Five. All four defendants are charged in Count Five with the murder of Darryl Wyche in aid of racketeering. Count Five reads in pertinent part, after incorporating the same first five paragraphs -- we're now over to Page 67 -- on or about March 24/25, 2002, in the State and District of Maryland, for the purpose of gaining entrance to and maintaining and increasing their positions in the Randallstown/Park Heights organization, and as consideration for the receipt of, and for a promise or agreement to pay a thing of

1 pecuniary value from the Randallstown/Park Heights organization,
2 an enterprise engaged in racketeering activity, Willie Mitchell,
3 Shelton Harris, Shelly Wayne Martin, and Shawn Gardner,
4 defendants, feloniously, willfully, and of deliberately
5 premeditated malice aforethought, did kill and murder Darryl
6 Wyche and did kill and murder Darryl Wyche during the
7 perpetration of robbery against the laws of Maryland.

8 Again, all four defendants are charged in Count Six,
9 which reads in relevant part, after incorporating the first five
10 paragraphs of Count One -- we're now over on Page 68 -- on or
11 about March 24/25, 2002, in the State and District of Maryland,
12 for the purpose of gaining entrance to and maintaining and
13 increasing their positions in the Randallstown/Park Heights
14 organization, and as consideration for the receipt of and for a
15 promise or agreement to pay a thing of pecuniary value from the
16 Randallstown/Park Heights organization, an enterprise engaged in
17 racketeering activity, all four named defendants feloniously,
18 willfully, and of deliberately premeditated malice aforethought,
19 did kill and murder Anthony Wyche and did murder Anthony Wyche
20 during the perpetration of robbery, against the peace, government
21 and dignity, and so on.

22 Defendant Shawn Gardner alone is charged in Count Seven
23 of the indictment with the murder in aid of racketeering of Tonya
24 Jones Spence. Count Seven also incorporates the first five
25 paragraphs of Count One and then reads, in Paragraph Two, which

1 you'll find on Page 69, on or about June 7, 2002, in the State
2 and District of Maryland, for the purpose of gaining entrance to
3 and maintaining and increasing his position in the
4 Randallstown/Park Heights organization, and as consideration for
5 the receipt of and for a promise or agreement to pay a thing of
6 pecuniary value from the Randallstown/Park Heights organization,
7 an enterprise engaged in racketeering activity, defendant Shawn
8 Gardner, feloniously, willfully and of deliberately premeditated
9 malice aforethought, did kill and murder Tonya Joan Spence and
10 did murder Tonya Jones Spence during the perpetration of robbery,
11 against the laws of Maryland.

12 Now, in order to prove that a defendant violated
13 Section 1959 as charged in Counts Two, Four, Five, Six and Seven,
14 the government must establish beyond a reasonable doubt each one
15 of the following five elements:

16 First, that an enterprise affecting interstate commerce
17 existed;

18 Second, that the enterprise was engaged in racketeering
19 activity;

20 Third, that the defendant had or was seeking a position
21 in the enterprise;

22 Fourth, that the defendant committed the alleged crime
23 of violence;

24 And fifth, the defendant's purpose in committing the
25 crime of violence was to maintain or increase his position in the

1 enterprise or in consideration for the receipt of anything of
2 value.

3 The first element the government must prove beyond a
4 reasonable doubt is that an enterprise existed which was engaged
5 in or had an effect upon interstate or foreign commerce. I have
6 already explained these requirements to you in connection with
7 the RICO conspiracy count, Count One.

8 The second element the government must establish beyond
9 a reasonable doubt is that the enterprise was engaged in
10 racketeering activity. I've already reviewed with you, in
11 connection with Count One, the acts of racketeering activity that
12 were engaged in by the enterprise, according to the indictment.

13 I charge you that racketeering activity includes such
14 offenses as murder, dealing in narcotics, and robbery. It is for
15 you to determine whether the enterprise engaged in these
16 activities as charged. You should give the words "engaged in"
17 their ordinary, everyday meaning.

18 For an enterprise to be engaged in racketeering
19 activity, it is enough to show that the enterprise committed or
20 was planning to commit some racketeering activity within a period
21 of time short enough under all of the circumstances so that it is
22 appropriate to say that the enterprise was engaged in
23 racketeering activity.

24 Some racketeering acts, such as narcotics distribution,
25 are federal offenses that I have already defined for you. In

1 order for state offenses, such as murder and robbery, to be
2 considered as racketeering acts, the government must prove to you
3 beyond a reasonable doubt that the defendant committed that
4 offense as defined by Maryland law. I have already instructed
5 you on the meaning of first and second degree murder, felony
6 murder, and robbery in Maryland law, and I will review the
7 definitions in my instruction on the fourth element.

8 The third element the government must establish beyond
9 a reasonable doubt is that defendant had or was seeking a
10 position in the enterprise. To establish this element, the
11 government must prove the defendant was actively engaged in
12 promoting the illegal activities of the enterprise. It is not
13 enough to prove the defendant was doing business with the
14 enterprise. The government must prove that he was actually a
15 member of the enterprise.

16 The fourth element the government must establish beyond
17 a reasonable doubt is that defendant committed murder. Let me
18 now instruct you on the elements of murder.

19 As I told you in connection with the first racketeering
20 act in Count One, under the laws of Maryland, first degree murder
21 is defined as the intentional killing of another person with
22 willfulness, deliberation, and premeditation. In order to
23 convict the defendants of first degree murder under Counts Two,
24 Four, Five, Six, and Seven, the government must prove beyond a
25 reasonable doubt, one, that the defendants caused the death of

1 the victim, and two, that the killing was willful, deliberate,
2 and premeditated.

3 As I also instructed you, willful means that the
4 defendant actually intended to kill the victim. Deliberate means
5 that the defendant was conscious of the intent to kill.
6 Premeditated means that the defendant thought about the killing
7 and that there was time, though it need only have been brief, for
8 the defendant to form the intent to kill.

9 The two elements of the crime of second degree murder
10 in Maryland law are as follows: That the conduct of the
11 defendant caused the death of the victim; and two, that the
12 defendant engaged in the deadly conduct either with the intent to
13 kill or with the intent to inflict such serious bodily harm that
14 death would be the likely result.

15 In addition to the allegations of first and second
16 degree intentional murder as described above, Counts Four, Five,
17 Six and Seven also charge the state offense of felony murder.
18 Specifically, Count Four charges that the murder of Lisa Brown
19 was committed during and in furtherance of the murder of Oliver
20 McCaffity.

21 In order to prove the charge of felony murder as
22 alleged on Count Four, the government must prove three elements.
23 One, that the defendant, or another participating in the crime
24 with the defendant, murdered Oliver McCaffity; two, that the
25 defendant, or another participating in the crime, killed Lisa

1 Brown; and three, that the act resulting in the death of Lisa
2 Brown occurred during the commission or escape from the scene of
3 the murder of Oliver McCaffity.

4 It is not necessary for the government to prove that
5 the defendant intended to kill Lisa Brown in order to convict the
6 defendant of felony murder.

7 Similarly, Counts Five, Six, and Seven charge that the
8 murders occurred during and in furtherance of the perpetration of
9 robbery. In order to convict the defendant of felony murder on
10 these counts, the government must prove three elements: One,
11 that the defendant or another participating, participating in the
12 crime with the defendant, committed robbery; two, that the
13 defendant, or another participating in the crime, killed the
14 victim named in each count; and three, that the act resulting in
15 the death of the victim occurred during the commission or escape
16 from the immediate scene of the robbery.

17 It is not necessary for the government to prove that
18 the defendant intended to kill the victim in order to convict of
19 felony murder.

20 As I will instruct you in more detail in these
21 instructions, the defendants also have been charged in Counts
22 Two, Four, Five, Six, and Seven with aiding and abetting the
23 offense of murder in aid of racketeering. The law recognizes
24 that a person can be criminally responsible for an act such as
25 murder if he aids and abets the commission of the crime by,

1 first, being present when the crime was committed, and second, by
2 willfully participating with the intent to make the crime
3 succeed.

4 The fifth element the government must establish beyond
5 a reasonable doubt is the defendant's general purpose in
6 committing the murder in each count was to maintain or increase
7 his position in or to gain entrance to the enterprise, or in
8 consideration for the receipt of anything of value.

9 The government is required to prove that defendant's
10 general purpose was to maintain or increase his position in the
11 enterprise. The government is not required to prove that it was
12 defendant's sole or principal motive.

13 In determining whether a defendant's purpose in
14 committing the murder or violent crime was to maintain or
15 increase his position in the enterprise, you should give the
16 words "maintain" and "increase" their ordinary meanings. You
17 should consider all of the facts and circumstances in making that
18 determination.

19 For example, you may consider evidence that the crime,
20 if proved, was committed in order to maintain discipline within
21 the enterprise and served to maintain the defendant's position in
22 the enterprise. If the defendant committed the crime because he
23 knew it was expected of him by reason of his membership in the
24 enterprise or if he committed the crime because he thought it
25 would enhance his position or prestige within the enterprise, or

1 if he committed it because he thought it was necessary to
2 maintain the position he already held, this element would be
3 established. These examples are only meant by way of
4 illustration. They are not exhaustive.

5 In summary and as stated above, Counts Two, Four, Five,
6 Six, and Seven of the indictment charge the defendants with first
7 and second degree murder in aid of racketeering. In addition, as
8 stated, Counts Two, Four, Five, Six and Seven charge the
9 defendants with first degree felony murder as well.

10 If the government fails to prove that a defendant
11 committed at least one of the types of murder for each count,
12 then you must find the defendant not guilty on that count. On
13 the other hand, the government need not prove all of the types of
14 murder for you to find the defendant guilty on each count. It is
15 sufficient if you find beyond a reasonable doubt that the
16 defendant committed at least one of the types of murder charged
17 in Counts Two, Four, Five, Six, and Seven in order to convict the
18 defendant.

19 However, in order to convict the defendant on one or
20 more of Counts Two, Four, Five, Six and Seven, all twelve jurors
21 must agree on at least one of the specific types of murder the
22 defendant committed. Accordingly, in order to find the defendant
23 guilty of murder in aid of racketeering, all of you must agree
24 that the defendant committed either first degree intentional
25 murder, second degree murder, or felony murder, as the case may

1 be. Of course, it is also possible that all of you may also
2 agree that the defendant committed more than one type of these
3 predicate offenses, but there must be agreement as to at least
4 one form of murder before a defendant may be convicted.

5 We move on, then, to Count Three.

6 Count Three charges defendants Mitchell and Harris with
7 conspiring to murder Oliver McCaffity in aid of racketeering.
8 Count Three reads, after incorporating Paragraphs One Through
9 Five of Count One, as have the other VICAR murder, violent crime
10 offenses I just described, goes on to read as follows in
11 Paragraph Two:

12 On or about February 27/28, 2002, in the State and
13 District of Maryland, for the purpose of gaining entrance to and
14 maintaining and increasing their positions in the
15 Randallstown/Park Heights organization, and as consideration for
16 the receipt of or for a promise or agreement to pay a thing, to
17 pay a thing of pecuniary value from the Randallstown/Park Heights
18 organization, an enterprise engaged in racketeering activity,
19 Willie Mitchell and Shelton Harris, defendants, did conspire with
20 one another and with other persons known and unknown to the grand
21 jury to feloniously, willfully and of deliberately premeditated
22 malice aforethought kill and murder Oliver McCaffity in violation
23 of and against the peace, government and dignity of the State of
24 Maryland, and in violation of statutory and common law.

25 Count Three charges a violation of a statute, Violent

1 Crimes in Aid of Racketeering Activity, which I just described to
2 you. The pertinent provisions of that law relevant to Count
3 Three relate to those who conspire to commit murder, in contrast
4 to the earlier counts where the statute deals with those who
5 actually commit murder.

6 The same two defendants are charged in Count Two, as I
7 just mentioned, with committing the actual murder of Oliver
8 McCaffity. As I have explained to you, the crime of conspiracy
9 is an independent offense separate and distinct from the
10 substantive crimes. Indeed, you may find the defendants guilty
11 of the crime of conspiracy to commit an offense against the
12 United States even though the substantive crime which was the
13 object of the conspiracy was not actually committed.

14 In order to satisfy its burden of proof for Count
15 Three, the government must establish each of the following three
16 essential elements beyond a reasonable doubt: First, that two or
17 more persons entered the unlawful agreement charged in the first
18 count of the indictment; second, that the defendant knowingly
19 became a member of the conspiracy; third, that the defendants
20 conspired to commit the murder either for the purpose of gaining
21 entrance to an enterprise engaged in racketeering activity or for
22 maintaining or increasing their position in an enterprise engaged
23 in racketeering activity, or as consideration for the receipt of
24 value, of anything of value.

25 I believe that's a typo, is it not? Should it read,

1 first, that two or more persons entered the unlawful agreement
2 charged in Count Three? I think --

3 MR. HARDING: Yes, Your Honor.

4 THE COURT: Yes. Okay. So again, I've caught just a
5 typo that I'm responsible for, ladies and gentlemen. If you go
6 back up near the top of Page 77, where I'm describing the first
7 element of the offense, the conspiracy to commit murder in
8 violation of Section 1959 as alleged in Count Three, it should
9 read first that two or more persons entered the unlawful
10 agreement charged in the third count of the indictment.

11 Okay. Resuming. I have already explained the first
12 two elements of conspiracy in connection with Count Eight and
13 Racketeering Count Nine. For Count Three, the third element is
14 that defendants Mitchell and Harris conspired to commit the
15 murder of Oliver McCaffity either for the purpose of gaining
16 entrance to an enterprise engaged in racketeering activity or for
17 maintaining or increasing their position in an enterprise; namely
18 here, the Randallstown/Park Heights organization, engaged in
19 racketeering activity or, as consideration for the receipt of
20 anything of value.

21 This element is the same as the fifth element for the
22 murder counts I explained to you a few moments ago.

23 To repeat, the government is required to prove that the
24 defendant's general purpose was to maintain or increase his
25 position in the enterprise. The government is not required to

1 prove that it was the defendant's sole or principal purpose.

2 In determining whether a defendant's purpose in
3 committing the murder or violent crime was to maintain or
4 increase his position in the enterprise, you should give the
5 words "maintain" and "increase" their ordinary meanings. You
6 should consider all of the facts and circumstances in making that
7 determination.

8 And again, ladies and gentlemen, you'll notice, I'm
9 sure you'll notice that I left out the word "conspiring to
10 commit" because here we're talking about Count Three in which Mr.
11 Mitchell and Mr. Harris are charged separately with conspiring to
12 murder Mr. McCaffity in aid of racketeering activities. And so
13 the very first line of Page 78 should read, in determining
14 whether a defendant's purpose in conspiring to commit the murder
15 or violent crime, and so on.

16 Again, you should give those words, the words
17 "maintain" and "increase" their ordinary meanings. You should
18 consider all of the facts and circumstances in making that
19 determination.

20 For example, you may consider evidence that the crime,
21 if proved, was committed in order to maintain discipline within
22 the enterprise and served to maintain the defendant's position in
23 the enterprise. If the defendant committed the crime because he
24 knew it was expected of him by reason of his membership in the
25 enterprise or if he committed the crime because he thought it

1 would enhance his position or prestige within the enterprise or
2 if he committed it because he thought it was necessary to
3 maintain the position he already held, this element would be
4 established.

5 These examples, again, are only meant by way of
6 illustration. They are not exhaustive.

7 We move now, ladies and gentlemen, to Counts 9, 10, 12
8 and 15 of the indictment. Counts 9, 10, 12 and 15 of the
9 indictment charge the defendants who are named in those counts
10 with possessing a firearm in furtherance of a crime of violence
11 or drug trafficking offense.

12 The indictment reads, as to Count Nine: On or about
13 February 27/28, 2002 in the State and District of Maryland,
14 Willie Mitchell and Shelton Harris, defendants, during and in
15 relation to a crime of violence for which the defendants may be
16 prosecuted in a court of the United States, that is, the murder
17 of Oliver McCaffity in aid of racketeering, in violation of
18 Section 1959(a)(1), as set forth in Count Two of -- and again
19 another typo, instead of third it should say fourth superseding
20 indictment -- and during and in relation to a drug trafficking
21 crime for which the defendants may be prosecuted in a court of
22 the United States, that is, conspiracy to distribute and possess
23 with intent to distribute controlled substances in violation of
24 federal law as set forth in Count Eight of this fourth
25 superseding indictment, did knowingly possess and discharge a

1 firearm in furtherance of said crimes.

2 Count 10 likewise charges Mr. Mitchell and Mr. Harris
3 with possession of a firearm in furtherance of a crime of
4 violence or a drug distribution, drug trafficking offense. And
5 in all respects it is identical to Count Nine except that it
6 charges the defendants in connection with Count Four of the
7 indictment, which is the conspiracy -- excuse me -- the murder of
8 Oliver McCaffity. Let me doublecheck and make sure I don't
9 misspeak.

10 MR. HARDING: I think it's Lisa Brown.

11 THE COURT: Lisa Brown. Excuse me. Okay. So count --
12 thank you, Mr. Harding. So Count Two -- I'm sorry, we're up to
13 Count 11, Count Nine -- excuse me. So Count Nine is the count
14 that refers to Count Two, which is the murder of Oliver
15 McCaffity. Count Ten is the same charge, possession of a firearm
16 in furtherance of a crime of violence, but it relates to both
17 Count Eight, the narcotics conspiracy, as well as the murder of
18 Lisa Brown in Count Four.

19 Count 12 -- I'm now on Page 80 -- charges all four
20 defendants. And it reads: On or about March 24/25, 2002, in the
21 State and District Maryland, defendants Mitchell, Harris, Martin
22 and Gardner, during and in relation to a crime of violent for
23 which the defendants may be prosecuted in a court of the United
24 States, that is the murders of Darryl and Anthony Wyche, in aid
25 of racketeering, in violation of federal law as set forth in

1 Counts Five and Six of the fourth superseding indictment, and
2 during and in relation to a drug trafficking crime for which the
3 defendants may be prosecuted in the United States, that is
4 conspiracy to distribute and possess with intent to distribute
5 controlled substances as set forth in Count Eight of, should be
6 fourth superseding indictment, did knowingly possess and
7 discharge a firearm, to wit, a .40 caliber semiautomatic handgun,
8 in furtherance of said crimes.

9 Count 15 goes on to charge that on or about June 7,
10 2002 in the State and District of Maryland, Shawn Gardner, AKA
11 Goo, defendant, during and in relation to a crime of violence for
12 which the defendant may be prosecuted in a court of the United
13 States, that is the murder of Tonya Jones Spence, in aid of
14 racketeering, in violation of Title 18, United States Code
15 Section 1959(a)(1), as set forth in Count Seven. Again, third is
16 there, ladies and gentlemen. We're talking always about the
17 fourth superseding indictment.

18 And you will recall, by the way, that I mentioned that
19 every time I refer to the indictment in my instructions, I'm
20 referring to the fourth superseding indictment, a separate copy
21 of which will be provided to you in the jury room during your
22 deliberations. So wherever you see third superseding indictment,
23 understand that it should say fourth superseding indictment.

24 During and in relation to a drug trafficking crime for
25 which the defendant may be prosecuted in a court of the United

1 States, that is, conspiracy to distribute and possess with intent
2 to distribute controlled substances in violation of Title 21,
3 United States Code, Section 846, as set forth in Count Eight, did
4 knowingly possess and discharge a firearm, to wit, a .357 caliber
5 magnum Dan Wesson Model 14 revolver, bearing Serial Number
6 304373, and a .40 caliber Smith & Wesson Glock, Model 23,
7 semiautomatic pistol, bearing serial number BDW356-US, in
8 furtherance of said crimes.

9 Now, the relevant statute on these counts is Title 18,
10 United States Code, Section 924(c), which provides in pertinent
11 part, any person who, in furtherance of any crime of violence or
12 drug trafficking crime for which the person may be prosecuted in
13 a court of the United States, possesses a firearm shall be guilty
14 of a crime. Under Count Nine, the two defendants named, Mr.
15 Mitchell and Mr. Harris, are charged with possessing a firearm in
16 furtherance of the crime of violence charged in Count Two, the
17 murder of Oliver McCaffity. They are also charged with
18 possessing the firearm in furtherance of the conspiracy to
19 distribute controlled substances charged in Count Eight.

20 As in the earlier counts, you need not find the
21 defendants possessed the firearm in furtherance of both Counts
22 Two and Count Eight, but before you may convict the defendant
23 under this count, all 12 members of the jury must be unanimous
24 that the possession was in furtherance of either Count Two or
25 Count Eight.

1 If upon all of the evidence you find that the
2 government has failed to prove either Count Two or Count Eight
3 beyond a reasonable doubt, then you will proceed no further.

4 Count Nine is to be considered only if you first find
5 the defendant guilty under Count Two or Count Eight as proved.
6 I'll have more to say about this shortly, ladies and gentlemen.

7 The same considerations apply to Count 10, which charge
8 Mr. Mitchell and Mr. Harris, and Count 12, which charges all
9 defendants, and Count 15, which charges Mr. Gardner, where the
10 defendants named are charged with possessing firearms in
11 furtherance of both crimes of violence and the drug conspiracy
12 count.

13 In reaching your verdict on Counts 9, 10, 12, and 15,
14 you may consider the evidence of the murder counts and the drug
15 conspiracy count, Count 8, only for the purpose of determining
16 whether the elements of Counts 9, 10, 12 and 15 have been
17 satisfied.

18 The government must prove each of the following
19 elements beyond a reasonable doubt to sustain its burden of
20 proving a defendant guilty of Counts 9, 10, 12, and 15 of the
21 indictment: First, that the defendant committed a crime of
22 violence or drug trafficking crime for which he might be
23 prosecuted in a court of the United States; second, that the
24 defendant knowingly possessed a firearm in furtherance of the
25 crime of violence charged or the drug conspiracy described in

1 Counts 9, 10, 12 and 15.

2 The first element the government must prove beyond a
3 reasonable doubt is that the defendant committed a crime of
4 violence or a drug trafficking crime for which he might be
5 prosecuted in a court of the United States. The defendants
6 Mitchell and Harris are charged in Count Nine with possessing a
7 firearm in furtherance of the murder of Oliver McCaffity, as
8 charged in Count Two of the indictment. I instruct you that the
9 crime of murder in aid of racketeering as charged in Count Two is
10 a crime of violence for which the defendants may be prosecuted in
11 a court of the United States. It is for you to determine beyond
12 a reasonable doubt whether the government has proven the crime of
13 murder as charged in Count Two.

14 The two named defendants, that is Mr. Mitchell and Mr.
15 Harris, are also charged in Count Nine with possessing a firearm
16 in furtherance of the drug conspiracy in Count Eight, which I
17 instruct you is a drug trafficking crime for which the defendants
18 may be prosecuted in a court of the United States. The very same
19 considerations apply to Counts 10, 12 and 15.

20 In Count Ten, the same two defendants are charged with
21 the murder in aid of racketeering of Lisa Brown as charged in
22 Count Four of the indictment, which I instruct you is a crime of
23 violence for which the defendants may be prosecuted in a court of
24 the United States.

25 In Count 12, all four defendants are charged with the

1 murders of Darryl and Anthony Wyche, as charged in Counts Five
2 and Six respectively, which I instruct you are crimes of violence
3 for which the defendants may be prosecuted in a court of the
4 United States.

5 In Count 15, defendant Gardner is charged with the
6 murder of Tonya Jones Spence, as set forth in Count Seven, which
7 I instruct you is a crime of violence for which the defendant may
8 be prosecuted in a court of the United States.

9 As in Count 9, the defendants charged in Counts 10, 12,
10 and 15 are also charged with possessing a firearm in furtherance
11 of the drug conspiracy, which is the separate charge placed in
12 Count 8, which I instruct you, again, is a drug trafficking crime
13 for which the defendants may be prosecuted in a court of the
14 United States.

15 Again, it is for you to determine that the government
16 has proven beyond a reasonable doubt that the defendant committed
17 the drug trafficking crimes and the crimes of violence charged.

18 The second element the government must prove beyond a
19 reasonable doubt is that the defendant knowingly possessed a
20 firearm in furtherance of one or more of the crimes described in
21 Counts 9, 10, 12 and 15. A firearm is any weapon which will or
22 is designed to or may be readily converted to expel a projectile
23 by the action of an explosive.

24 To prove that the defendant possessed the firearm in
25 furtherance of the crime, the government must prove that the

1 defendant had possession of the firearm and that such possession
2 was in furtherance of that crime.

3 Possession means that the defendant either had physical
4 possession of the firearm on his person or that he had dominion
5 and control over the place where the firearm was located and had
6 the power and intention to exercise control over the firearm.

7 To possess a firearm in furtherance of the crime means
8 that the firearm helped forward, advance, or promote the
9 commission of the crime. The mere possession of the firearm at
10 the scene of the crime is not sufficient under this definition.
11 The firearm must have played some part in furthering the crime in
12 order for this element to be satisfied.

13 Again, in each of the four counts charged -- in
14 addition, each of four counts charges the defendants with aiding
15 and abetting, about which I will have more to say in a few
16 minutes.

17 Now we move on to Counts 11, 13, 14 and 16. Counts 11,
18 13, 14 and 16 charge the defendants named in each count with
19 causing the death of a person through the use of a firearm in the
20 course of committing the offense charged under count, under Title
21 18, United States Code, Section 924(c), which I just described.
22 In other words, Counts 11, 13, 14 and 16 charge the defendants
23 with causing a death in the course of committing the possession
24 and use of firearms crimes charged respectively in Counts 9, 10,
25 12, and 15.

1 So in other words, we can just step back for a moment,
2 ladies and gentlemen. The earlier counts charged the defendants
3 with possession of a firearm in furtherance of either a crime of
4 violence, murder, or the drug conspiracy charged in Count Eight.
5 And I just instructed you on that.

6 Now I'm about to instruct you on causing a death in
7 connection with the possession of firearms which I just described
8 to you. So Count 11 reads, On or about February 27/28, 2002, in
9 the State and District of Maryland, Mr. Mitchell and Mr. Harris,
10 defendants, in the course of a violation of Title 18, United
11 States Code, Section 924(c), which I just described to you, as
12 set forth in Count 10 of this fourth superseding indictment,
13 caused the death of a person through the use of a firearm, a
14 killing that was a murder as defined in Title 18, United States
15 Code, Section 1111 in that the defendants murdered a human being,
16 Lisa Brown, willfully, deliberately, maliciously, with
17 premeditation, and committed said murder in the perpetration of
18 the murder of Oliver McCaffity.

19 Count 13 similarly charges Mr. Mitchell, Mr. Harris,
20 Mr. Martin, and Mr. Gardner, all four defendants, with the same
21 offense; namely, in the course of a violation of Title 18, United
22 States Code, Section 924(c), the possession of a firearm charge,
23 as set forth in Count 12 of the fourth superseding indictment,
24 caused the death of a person through the use of a firearm, a
25 killing that was a murder as defined in Title 18, United States

1 Code, Section 1111, in that the defendants unlawfully and with
2 malice aforethought murdered a human being, Darryl Wyche, in the
3 perpetration of robbery.

4 Count 14, likewise, names all four defendants and
5 contains the same allegations that you see in Count 15 -- excuse
6 me -- in Count 13, only there the victim is Anthony Wyche rather
7 than Darryl Wyche.

8 Count 16 goes on, same charge, this time under the date
9 of June 7, 2002, naming only Mr. Gardner in connection with the
10 death of Tonya Jones Spence. Namely, as the count reads on Page
11 88, Shawn Gardner, defendant herein, on or about June 7, 2002, in
12 the course of a violation of Section 924(c) of Title 18, United
13 States Code, as set forth in Count 15 of the fourth superseding
14 indictment, caused the death of a person through the use of a
15 firearm, a killing that was a murder as defined in Title 18,
16 United States Code, Section 1111, in that the defendant
17 unlawfully and with malice aforethought murdered a human being,
18 Tonya Jones Spence, in the attempted perpetration of robbery and
19 the murder of Darius Spence.

20 Now, I'm going to read the statute and then explain the
21 elements of these charges.

22 The relevant statute under Counts 11, 13, 14 and 16 is
23 Title 18, United States Code, Section 924(j), you'll notice a
24 different section from 924(c), which provides that a person who,
25 in the course of a violation of Subsection (c) of the statute

1 causes the death of a person through the use of a firearm, if the
2 killing is a murder as defined in Section 1111, is guilty of a
3 crime.

4 Section 1111 of Title 18, the United States Code, in
5 turn defines murder as follows: Murder is the unlawful killing
6 of a human being with malice aforethought. Every murder
7 perpetrated by any kind of willful, deliberate, malicious and
8 premeditated killing or committed in the perpetration of or
9 attempt to perpetrate murder or robbery is murder in the first
10 degree.

11 The government has charged each of the offenses in
12 Counts 11, 13, 14 and 16 as premeditated murder and also as
13 felony murders; the latter, that is the felony murders, on the
14 ground that the murders were committed in the perpetration of or
15 attempt to perpetrate murder or robbery; that is, what we mean by
16 felony murder. You may find a defendant guilty of these counts
17 if you find him guilty of either premeditated murder or felony
18 murder or of both, premeditated and felony murder.

19 On the verdict sheet which we will come to shortly, you
20 will be asked to indicate whether you find each defendant guilty
21 or not guilty of each kind of murder. In order to find a
22 defendant guilty of premeditated murder, the government must
23 prove each of the following elements beyond a reasonable doubt to
24 sustain its burden of proving the defendants guilty of Counts 11,
25 13, 14, and 16. First, that the defendant committed the crime

1 charged in the underlying 924(c) counts. For Count 11, the
2 underlying 924(c) count is Count 10; for Counts 13 and 14, it is
3 Count 12; for Count 16, it is Count 15;

4 Second, that the defendant, through the use of the
5 firearm, caused the death of the person named in Counts 11, 13,
6 14 and 16, as the case may be;

7 Third, that in causing the death, the defendant acted
8 with malice aforethought;

9 And fourth, that the defendant acted with
10 premeditation.

11 As I indicated earlier, Count 11 charges the defendants
12 named in that count with committing a murder during the course of
13 committing the murder charged in Count 10. Accordingly, if upon
14 all of the evidence you find that the government has failed to
15 prove Count 10 beyond a reasonable doubt as to a particular
16 defendant, then you will proceed no further as to that defendant
17 on Count 11. You should only consider the question of whether
18 the defendant committed the offense charged in Count 11 if you
19 find the particular defendant guilty under Count 10 as charged.

20 The same applies to Counts 13, 14 and 16. You must
21 first find the defendants guilty of the murder in the underlying
22 924(c) offense named in each count.

23 The second element the government must prove is that
24 the defendants killed the victim named through the use of a
25 firearm. In this regard, it is the government's burden to prove

1 that the defendant's use of a firearm was a direct cause of the
2 death of the victim named in each count. This means that the
3 government must prove that the defendants inflicted an injury or
4 injuries upon the victim using a firearm from which the victim
5 died. It is not necessary that the injuries inflicted by the use
6 of the firearm alone caused the death. It is instead sufficient
7 if the government proves that the injury or injuries resulting
8 from the defendant's use of the firearm was a cause of the
9 victim's death.

10 The next element the government must prove beyond a
11 reasonable doubt is that the defendants acted with malice
12 aforethought. Malice aforethought is the state of mind that
13 would cause a person to act without regard for the life of
14 another. To satisfy this element, the defendant must have acted
15 consciously, with an intent to kill another person. However, the
16 government need not prove a subjective intent to kill on the part
17 of the defendant. It would be sufficient to satisfy this element
18 if it proved reckless and wanton conduct on the part of the
19 defendant which grossly deviated from a reasonable standard of
20 care, such that he was aware of the serious risk of death.

21 In order to establish this element, the government must
22 prove that the defendant acted willfully, with a bad or evil
23 purpose to break the law. However, the government need not prove
24 spite, malevolence, hatred or ill will towards the victim.

25 The final element the government must prove beyond a

1 reasonable doubt with respect to premeditated murder under these
2 counts is that the defendants acted willfully, deliberately, and
3 with premeditation.

4 An act is done with premeditation if it is done upon
5 deliberation. In other words, premeditation means deliberating
6 or thinking about whether to act before actually committing the
7 crime, as opposed to doing something instantaneously.

8 In order to satisfy this element, the government must
9 prove that the defendants killed the victim only after thinking
10 the matter over, deliberating whether to act before committing
11 the killings. There is no requirement that the government prove
12 that the defendant deliberated for any particular period of time
13 in order to order to show premeditation.

14 Willful, deliberate and premeditated means that the
15 killing is done on purpose after a period of time for prior
16 consideration. The duration of that period cannot be arbitrarily
17 fixed. The time in which to form a deliberate design varies as
18 the minds and temperaments of individuals differ and according to
19 the circumstances in which the individual may be placed.

20 Any interval of time between the forming of the intent
21 to kill and the execution of that intent which is of sufficient
22 duration for the accused to be fully conscious of what he
23 intended is sufficient to support a conviction for premeditated
24 murder.

25 In order to prove beyond a reasonable doubt a

1 defendant's guilt of felony murder, the government must prove
2 each of the following elements: First, that the defendant
3 committed the crime charged in the underlying 924(c) counts. As
4 mentioned, for Count 11 the underlying 924(c) count is Count 10,
5 for Counts 13 and 14 it is Count 12, and for Count 16 it is Count
6 15.

7 Second, that the defendant, through the use of the
8 firearm, caused the death of the person named in that count.

9 And third, that the defendant acted unlawfully; that
10 is, that he acted without justification or excuse.

11 And fourth, that the death caused by the defendant
12 resulted from the perpetration of or attempt to perpetrate the
13 underlying crime charged in the indictment; namely, the murder of
14 Oliver McCaffity as alleged in Count 11, the robbery of Darryl
15 Wyche as alleged in Count 13 and 14, and the robbery of Tonya
16 Jones Spence, as alleged in Count 16.

17 I have previously defined the crimes of murder and
18 robbery in these instructions.

19 We move on, then, to Counts 17 and 18, ladies and
20 gentlemen, which are identical, with the only difference being
21 the name of the defendant in the respective count and the date of
22 the offense, and the particular handgun which is described.

23 Count 17 charges Mr. Gardner, on or about June 7, 2002,
24 having been previously convicted of one or more crimes punishable
25 by imprisonment for a term exceeding one year, did knowingly,

1 intentionally and unlawfully possess the following firearms, in
2 and affecting interstate or foreign commerce: A .357 caliber
3 Magnum Dan Wesson Model 14 revolver, with the serial number
4 listed there in the indictment, and a .40 caliber S & W Glock
5 Model 23 semiautomatic pistol, bearing the serial number you see
6 listed there from the indictment.

7 Similarly, Count 18 of the indictment charges Mr.
8 Harris with the same offense, providing that it occurred on or
9 about January 22nd, 2004 in the State and District of Maryland,
10 wherein Mr. Harris, having previously been convicted of one or
11 more crimes punishable by imprisonment for a term exceeding one
12 year did knowingly, intentionally and unlawfully possess a
13 firearm in and affecting interstate and foreign commerce, namely,
14 a Llama .45 caliber semiautomatic pistol, bearing the serial
15 number you see listed there from the indictment.

16 Counts 17 and 18 charge the defendant named in each of
17 those counts with a violation of Section 922(g)(1) of Title 18,
18 United States Code. That section provides, It shall be unlawful
19 for any person who has been convicted in any court of a crime
20 punishable by imprisonment for a term exceeding one year to
21 possess, in or affecting commerce, any firearm.

22 The government must prove each of the following
23 elements beyond a reasonable doubt in order to sustain its burden
24 of proving the defendant guilty.

25 First, that the defendant was convicted in any court of

1 a crime punishable by imprisonment for a term exceeding one year.
2 Second, that the defendant knowingly possessed the firearm as
3 charged. And third, that the possession charged was in or
4 affecting interstate or foreign commerce.

5 The first element the government must prove beyond a
6 reasonable doubt before you can convict is that before the date
7 the defendant is charged with possessing the firearm, the
8 defendant had been convicted of a crime punishable by
9 imprisonment for a term exceeding one year. The parties have
10 stipulated that the defendant was convicted of a crime in state
11 court and that this crime is punishable by imprisonment for a
12 term exceeding one year. It has also been stipulated that this
13 felony conviction occurred prior to the time that the defendant
14 is alleged to have possessed the weapon charged in the
15 indictment, Counts 17 and 18. You may thus accept this fact and
16 not require the government to produce any further proof upon the
17 matter.

18 It is not necessary that the government prove that the
19 defendant knew that his prior conviction was a crime punishable
20 by imprisonment for more than one year, nor is it necessary for
21 the defendant to have been sentenced to imprisonment for more
22 than one year. A plea of guilty has the same consequences as a
23 conviction after trial.

24 I instruct you in this connection that the prior
25 conviction that is an element of the charge here, that is in

1 Counts 17 and 18, is only to be considered by you for the fact
2 that it exists and for nothing else. You are not to consider it
3 for any other purpose. You are not to speculate as to what it
4 was for. You may not consider the prior convictions in deciding
5 whether it is more likely than not that the defendant was in
6 knowing possession of the gun that is charged, which is the
7 disputed element of the offense.

8 The second element which the government must prove
9 beyond a reasonable doubt is that on or about the date set forth
10 in the indictment, the defendant knowingly possessed a firearm.
11 As I instructed you previously, a firearm is any weapon which
12 will or is designed to or may be readily converted to expel a
13 projectile by the action of an explosive.

14 To possess means to have something within a person's
15 control. This does not necessarily mean that the defendant had
16 to hold the firearm physically, that is, have actual possession
17 of it. As long as the firearm is within his control, the
18 defendant possesses it.

19 If you find that the defendant either had actual
20 possession of the firearm or that he had the power and intention
21 to exercise control over it, even though it was not in his
22 physical possession, you may find that the government has proven
23 possession.

24 The law also recognizes that possession may be sole or
25 joint. If one person alone possesses it, that is sole

1 possession. However, it is possible that more than one person
2 may have the power and intention to exercise control over the
3 firearm. This is called joint possession.

4 If you find that the defendant had such power and
5 intention, then he possessed the firearm under this element even
6 if he possessed it with another. Proof of ownership of the
7 firearm is not required.

8 To satisfy this element, you must also find that the
9 defendant knowingly possessed the firearm. This means that he
10 possessed the firearm purposely and voluntarily and not by
11 accident or mistake. It also means that he knew that the weapon
12 was a firearm, as we commonly use the word. However, the
13 government is not required to prove that the defendant knew that
14 he was breaking the law.

15 You are further instructed that the government is not
16 required to prove that the firearm was operable in order to prove
17 that it was a firearm, as I have just instructed you.

18 The third element the government must prove beyond a
19 reasonable doubt is that the firearm the defendant is charged
20 with possessing was in or affecting interstate commerce. This
21 means that the government must prove that at some time prior to
22 the defendant's possession, the firearm traveled in interstate
23 commerce. It is sufficient for the government to satisfy this
24 element by proving that at any time prior to the date charged in
25 the indictment the firearm crossed a state line. It is not

1 necessary that the government prove that the defendant himself
2 carried it across the state line, nor must the government prove
3 who carried it across or how it was transported. It is also not
4 necessary for the government to prove that the defendant knew
5 that the firearm had previously traveled in interstate commerce.

6 In this regard, there has been evidence that the
7 firearms in question were manufactured in a different state, in a
8 state different from Maryland where the defendant is charged with
9 possessing it. You are permitted to infer from this fact that
10 the firearm traveled in interstate commerce; however, you are not
11 required to do so.

12 The last count in the indictment, ladies and gentlemen,
13 is Count 19. Only defendant Shelton Harris is charged in Count
14 19. He is charged in that count with retaliating against a
15 witness or informant in an official federal proceeding.

16 That count reads as follows: The grand jury for the
17 District of Maryland charges further that on or about June 13,
18 2005, in the State and District of Maryland, Shelton Harris, the
19 defendant, did knowingly engage and attempt to engage in conduct
20 and thereby cause bodily injury and damage the tangible property
21 of another person whose identity is known to the grand jury, and
22 threatened to do so, in that the defendant physically struck and
23 wrestled with another person with the intent to retaliate against
24 the person for information relating to the commission or possible
25 commission of federal offenses; namely, racketeering, murder, and

1 narcotics trafficking given by a person to a law enforcement
2 officer.

3 The relevant statute on this subject is Section 1513 of
4 Title 18, which provides: Whoever knowingly engages in any
5 conduct and thereby causes bodily injury to another person or
6 attempts to do so, or damages the property of another person or
7 threatens to do so, with intent to retaliate against any person
8 for any information relating to the commission or possible
9 commission of a federal offense or a violation of conditions of
10 probation, supervised release, parole, or release pending
11 judicial proceedings given by a person to a law enforcement
12 should be guilty of a crime.

13 In order to prove the defendant Harris guilty beyond a
14 reasonable doubt of Count 19 of the indictment, the government
15 must prove each of the following elements beyond a reasonable
16 doubt.

17 First, that the defendant engaged in conduct causing
18 bodily injury to a person or attempted to do so or damage the
19 property of a person, or threatening to do so.

20 Second, that the defendant acted knowingly and with
21 specific intent to retaliate against a person for information
22 given relating to the commission of a federal offense to a law
23 enforcement officer.

24 The first element the government must prove beyond a
25 reasonable doubt is that the defendant engaged in some conduct

1 and thereby caused bodily injury, or attempted to do so, or
2 threatened to do so.

3 Bodily injury means a cut, abrasion, bruise, burn or
4 disfigurement, physical pain, illness, or the impairment of the
5 function of a bodily member, organ or mental faculty. It
6 includes injury to the body, no matter how temporary.

7 In this regard, it is not necessary that the defendant
8 himself caused the bodily injury. It is sufficient if you find
9 that the defendant knowingly participated in some activity which
10 had the consequence or effect of injuring a person. Nor is it
11 necessary to prove that a person actually was injured. It is
12 sufficient if the defendant knowingly threatened to cause bodily
13 injury to a person.

14 A threat is simply the expression of intent to harm. A
15 threat may be communicated by words as well as gestures. In
16 order to find the defendant threatened to cause bodily injury,
17 bodily harm, you need not find that he intended to carry out the
18 threat.

19 In addition, Count 19 is charged as an attempted crime,
20 and I will instruct you on this in a moment.

21 The second element the government must prove beyond a
22 reasonable doubt is that the defendant acted knowingly and with
23 the specific intent to retaliate against the person for
24 information given relating to the commission of a federal offense
25 to a law enforcement officer.

1 An act is done knowingly if it is done voluntarily and
2 purposely and not by accident or mistake.

3 By specific intent, I mean that the defendant must have
4 acted knowingly and with unlawful intent to retaliate against the
5 person for the information given relating to the commission of a
6 federal offense to a law enforcement officer. In order to
7 satisfy this element, it is not necessary for the government to
8 prove that the defendant knew he was breaking any particular law.

9 As I indicated, Count 19 is also charged as an
10 attempted crime. In order to prove the crime of attempting to
11 commit the crime of witness retaliation, the government must
12 prove the following two elements beyond a reasonable doubt:
13 First, that the defendant intended to commit the crime of witness
14 retaliation; and second, that the defendant did some act that was
15 a substantial step in the effort to bring about or accomplish the
16 crime.

17 Mere intention to commit a crime does not amount to an
18 attempt. In order to convict the defendant of an attempt, you
19 must find beyond a reasonable doubt that the defendant took some
20 action which was a substantial step toward the commission of that
21 crime.

22 In determining whether the defendant's actions amounted
23 to a substantial step toward the commission of a crime, it is
24 necessary to distinguish between mere preparation, on the one
25 hand, and the actual doing of the criminal deed, on the other.

1 Mere preparation, which may consist of planning the offense or
2 devising, obtaining, or arranging a means for its commission, is
3 not an attempt.

4 The acts of a person who intends to commit a crime will
5 constitute an attempt when the acts themselves clearly indicate
6 an attempt to commit the crime and the acts are a substantial
7 step in a course of conduct planned to culminate in the
8 commission of the crime.

9 Now we turn to the concept of aiding and abetting,
10 ladies and gentlemen. In Counts 2 through 16, except Counts 8
11 and 19, the government asserts that you may find the defendants
12 named in those counts guilty either by finding that the named
13 defendants actually did the acts with the intent required to
14 constitute an offense, but also on the theory of aiding and
15 abetting one or more other persons in committing the acts
16 constituting the offense.

17 In other words, the government has argued that it is
18 not necessary for it to show that a defendant himself physically
19 committed the crime with which he is charged in order for you to
20 find the defendant guilty. A person who aids or abets another to
21 commit an offense is just as guilty of that offense as if he
22 committed it himself. Accordingly, you may find the defendant
23 guilty of the offense charged if you find beyond a reasonable
24 doubt that the government has proved that another person actually
25 committed the offense with which the defendant is charged and

1 that the defendant aided or abetted that person in the commission
2 of the offense.

3 As you can see, the first requirement is that you find
4 that another person has committed the crime charged. Obviously,
5 no one can be convicted of aiding or abetting the criminal acts
6 of another if no crime was committed by the other person in the
7 first place. But if you do find that a crime was committed, then
8 you must consider whether the defendant aided or abetted the
9 commission of the crime.

10 In order to aid or abet another to commit a crime, it
11 is necessary that the defendant willfully and knowingly associate
12 himself in some way with the crime, and that he willfully and
13 knowingly seek by some act to help make the crime succeed.

14 Participation in a crime is willful if action is taken
15 voluntarily or intentionally, or in the case of a failure to act,
16 with the specific intent to fail to do something the law requires
17 to be done; that is to say, with a bad purpose either to disobey
18 or disregard the law.

19 The mere presence of a defendant where a crime is being
20 committed, even coupled with knowledge by the defendant that a
21 crime is being committed, or the mere acquiescence by a defendant
22 in the criminal conduct of others, even with guilty knowledge, is
23 not sufficient to establish aiding and abetting. An aider and
24 abettor must have some interest in the criminal venture.

25 To determine whether a defendant aided or abetted the

1 commission of crime with which he is charged, ask yourselves
2 these questions. Did he participate in the crime charged as
3 something he wished to bring about? Did he associate himself
4 with the criminal venture knowingly and willfully? Did he seek
5 by his actions to make the criminal venture succeed? If he did,
6 then the defendant is an aider and abetter and, therefore, guilty
7 of the offense. If, on the other hand, your answers to this
8 series of questions are no, then the defendant is not an aider
9 and abetter and you must find him not guilty.

10 There is yet a further theory of criminal liability
11 which the government relies on in respect to the offenses charged
12 in Counts 2 through 16 of the indictment. If, in light of my
13 instructions, you find beyond a reasonable doubt a defendant was
14 a member of the conspiracy charged in Count One of the indictment
15 or of the conspiracy charged in Count Eight of the indictment and
16 thus guilty of conspiracy, then you may also, but you are not
17 required to, find him guilty of the substantive crimes charged
18 against him in Counts 2 through 16, provided you find beyond a
19 reasonable doubt each of the following elements:

20 First, that the crimes charged in the substantive
21 counts, Counts 2 through 7 and 9 through 18, were committed;

22 Second, that the person or persons you find actually
23 committed the crime were members of the conspiracy you found
24 existed;

25 Third, that the substantive crimes were committed

1 pursuant to the common plan and understanding you found to exist
2 among the conspirators;

3 Fourth, that the defendant was a member of that
4 conspiracy at the time the substantive crimes were committed;

5 And fifth, that the defendant could have reasonably
6 foreseen that the substantive crimes might be committed by his
7 coconspirators.

8 If you find all five of these elements to exist beyond
9 a reasonable doubt, then you may find a defendant guilty of the
10 substantive crimes charged against him even though he did not
11 personally participate in the acts constituting the crimes or did
12 not have actual knowledge of it.

13 The reason for this rule is that, as I earlier stated,
14 a coconspirator who commits a substantive crime pursuant to a
15 conspiracy is deemed to be the agent of the other conspirators.
16 Therefore, all of the coconspirators must bear criminal
17 responsibility for the commission of the substantive crimes. If,
18 however, you are not satisfied as to the existence of any of
19 these five elements, then you may not find the defendant guilty
20 of the substantive crime under this theory of liability.

21 In addition to the foregoing elements of the offenses,
22 you must consider whether any act in furtherance of the crime
23 occurred within the District of Maryland. You are instructed
24 that the District of Maryland encompasses the State of Maryland.
25 In this regard, the government need not prove that the crime

1 itself was committed in this district or that the defendants
2 themselves were present here. It is sufficient to satisfy this
3 element if any act in furtherance of the crime occurred within
4 this district.

5 If you find that the government has failed to prove
6 that any act in furtherance of the crime occurred within this
7 district or if you have a reasonable doubt on this issue, then
8 your verdict must be not guilty.

9 I'm on Page 104 now, ladies and gentlemen.

10 Defendants have raised, in respect to many counts in
11 the indictment, the defense of alibi; that is, that they were not
12 present at the time and the place where a particular crime is
13 alleged to have been committed. It is the government's burden to
14 prove beyond a reasonable doubt each and every element of the
15 offense as I have defined those elements, including that a
16 defendant was present at the time and place that the offense is
17 alleged to have occurred. If, after you consider all of the
18 evidence in this case, and in light of all of my instructions,
19 you have a reasonable doubt about whether any defendant was
20 present at the time and place where the crime allegedly occurred,
21 then you must acquit that defendant.

22 The government contends that the defendant's alibis are
23 false. If you find that a defendant gave a false statement in
24 order to mislead the investigating authorities that he was not
25 present at the scene of the crime, you may, but need not, infer

1 that the defendant believed that he was guilty. You may not,
2 however, infer on the basis of this alone that any defendant is,
3 in fact, guilty of the crime for which he is charged.

4 Whether or not evidence as to a defendant's fabrication
5 of an alibi shows that he knew he was guilty and the
6 significance, if any, to be given to this evidence are matters
7 for you, the jury, to decide.

8 While we're on the subject of elements, I should draw
9 your attention to the fact that it does not matter if the
10 indictment charges that a specific act occurred on or about a
11 certain date and the evidence indicates that, in fact, it was on
12 another date. The law only requires a substantial similarity
13 between the dates alleged in the indictment and the date
14 established by testimony or exhibits.

15 The question of possible punishment of a defendant is
16 no concern to the jury and should not in any sense enter into or
17 influence your deliberations. The duty of imposing sentence
18 rests exclusively upon the court. Your function is to weigh the
19 evidence in the case and to determine whether or not a defendant
20 is guilty beyond a reasonable doubt solely upon the basis of such
21 evidence. Under your oath as jurors, you cannot allow a
22 consideration of the punishment which may be imposed upon the
23 defendant if he is convicted to influence your verdict in any
24 way, or in any sense enter into your deliberations.

25 Now, I will be sending a copy, as I mentioned, ladies

1 and gentlemen, of the indictment, the fourth superseding
2 indictment, into the jury room for you to have during your
3 deliberations. Of course, the indictment itself has been
4 duplicated within my instructions. But a separate, individual
5 copy of the indictment, as I say, will be sent in for your use
6 during your deliberations.

7 You are reminded that the indictment is merely an
8 accusation and is not to be used by you as any proof of the
9 conduct charged. You may use it to read the crimes with which
10 the defendants are charged with committing.

11 It will be your duty to return your verdict in the form
12 of written answers to the written questions which are being
13 submitted by the court. Your answers will constitute your
14 verdict. Each answer is to be written or checked in the space
15 provided after each question or item. Before making each answer,
16 all of you must agree upon it. It is your duty to answer each of
17 these questions in accordance with the evidence in the case.

18 So I'm going to now review the verdict form for you,
19 ladies and gentlemen, which you see is reproduced there on Page
20 106 of your draft instructions.

21 Now, let me say to you that the verdict form is a
22 separate, separately numbered 18-page document. Your foreperson,
23 whoever that may turn out to be, will complete the verdict sheet
24 and will use it to deliver your verdict here in open court once
25 you have reached your verdict. I want to just go through this

1 very quickly with you so that you have some familiarity with the
2 verdict form.

3 I should start by pointing out the verdict form is a
4 document which basically structures your consideration of the
5 evidence and of the indictment from Count One through Count 19.
6 But it's obvious, I'm sure, you're not required to do your work
7 in any particular order. You are free to consider the counts of
8 the indictment in whatever order you choose. We've simply listed
9 them here 1 through 19 because that's the manner in which the
10 indictment is laid out.

11 So it's an 18-page document with the name of the case,
12 the number of the case, and a series of questions and items that
13 you must reach decisions about.

14 So Page One starts with Count One, the racketeering
15 conspiracy, as you can see. And the first four items, each asks
16 you for your verdict as to each of the four defendants charged in
17 this count. Mr. Mitchell -- and in each count you will notice
18 where Mr. Mitchell is a defendant, he will be listed first. And
19 in any count where all four defendants are named, they will be
20 named in the same order, Mitchell, Harris, Martin, and Gardner.

21 Of course, as you already know, there are some counts
22 in which only Mr. Gardner is named. There are some counts in
23 which only Mr. Harris is named, that one count, 19. There are
24 counts in which only Mr. Mitchell and Mr. Harris are named. So
25 you will see for each count where a defendant is named, a

1 separate item for that defendant.

2 So Count One, racketeering conspiracy. How do you find
3 the defendant, Willie Mitchell, as to the charge of racketeering
4 conspiracy in Count One of the indictment? Not guilty or guilty,
5 as the case may be. Same question for the other three
6 defendants.

7 And then Question Five under Count One requires you to
8 tell us which of the nine racketeering counts -- excuse me --
9 racketeering acts you find to have been proven by beyond a
10 reasonable doubt. You will remember under my instructions, in
11 order for any defendant to be convicted, among the other
12 elements, you must find that at least two racketeering acts were
13 committed or intended to be committed by the members of the
14 conspiracy.

15 So the nine racketeering acts are listed here under
16 Question Five. And you will tell us, One through Nine, whether
17 yes, you are unanimous in finding each racketeering act proven
18 beyond a reasonable doubt or, no, we don't find one or more of
19 the racketeering acts proven beyond a reasonable doubt.

20 Then the verdict sheet guess on to Count Two. Count
21 Two, you will recall, is the murder in aid of racketeering, and
22 it names Mr. Mitchell and Mr. Harris. So the first question
23 under Count Two, How do you find the defendant, Willie Mitchell,
24 as to the charge of murder in aid of racketeering, Count Two?
25 And so you will find not guilty or guilty as to both Mr. Mitchell

1 and Mr. Harris, who are the only two defendants named in that
2 count.

3 And you will remember that under Count Two there are
4 two separate forms of murder under Maryland law that you may
5 consider, premeditated murder and second degree murder. And so
6 for each defendant in each of those counts, you will tell us
7 whether you find beyond a reasonable doubt premeditated murder
8 and/or second degree murder. You can find both, you can find one
9 or the other, and you can find neither if that's your evaluation
10 of the evidence.

11 Count Three, likewise, goes on to a different count of
12 murder in aid of racketeering, in which Mr. Mitchell is charged
13 and Mr. Harris is charged. Now, in Count Three, there is only
14 the conspiracy to commit murder, which is the basis for that
15 charge. In other words, conspiracy, you remember the 1959
16 counts, murder in aid of racketeering is Count Two and then Count
17 Three is conspiracy to commit murder in aid of racketeering. So
18 each of these Counts Two and Count Three relate to Oliver
19 McCaffity.

20 So the murder of Mr. McCaffity in Count Two, the
21 conspiracy to murder Mr. McCaffity in Count Three. And only Mr.
22 Mitchell and Mr. Harris are charged in those two counts.

23 And then in Count Four we get back to actual murder in
24 aid of racketeering. Count Four again charges Mr. Mitchell and
25 Mr. Harris with murder in aid of racketeering. And this relates

1 to Lisa Brown.

2 And same configuration here, as you see. Guilty or not
3 guilty as to the two defendants. And then you'll have to tell us
4 whether you find premeditated murder or second degree murder.
5 And you'll notice in Count Four there's a third option with
6 respect to the type of murder -- felony murder. And that's
7 because the indictment charges that Ms. Brown was murdered not
8 only on the basis of premeditation, intentional killing, not only
9 as a second degree murder, intentional killing without
10 premeditation, but the indictment alleges and the government
11 argues that Ms. Brown was killed in the course of the murder of
12 Mr. McCaffity. And as I've instructed you, if a person is killed
13 in the course of somebody else's murder, then that's what we call
14 felony murder.

15 And so the Lisa Brown count, Count Four, will require
16 you to tell us which, if any or all, of the three kinds of murder
17 you find the government has proven beyond a reasonable doubt as
18 to both Mr. Mitchell and Mr. Harris.

19 Moving on. Count Five likewise is a murder in aid of
20 racketeering. And again we have the three options. But this
21 time, of course, you'll recall all four defendants are charged in
22 Count Five. This relates to one of the Wyche brother murders.

23 So you will determine whether Mr. Mitchell is guilty or
24 not, Mr. Harris is guilty or not, Mr. Martin is guilty or not,
25 and Mr. Gardner is guilty or not based on your evaluation of the

1 evidence. And then additionally, as to that count, you will
2 determine whether it is premeditated murder or not, second degree
3 murder or not, and/or felony murder or not because, again, the
4 indictment charges and the government argues that the Wyches were
5 killed in the course of a robbery. And so that would make it
6 felony murder if you find beyond a reasonable doubt that they
7 were killed in the course of a robbery.

8 So Count Five, all four defendants, all three types of
9 murder, related to Darryl Wyche. And then Count Six is
10 substantially identical to Count Five, relating to Anthony Wyche.
11 Same four defendants, same three types of murder for each of the
12 four defendants.

13 Then Count Seven you will remember, of course, only Mr.
14 Gardner is charged. This relates to the murder of Tonya Jones
15 Spence. And so you are being asked whether Mr. Gardner is guilty
16 or not guilty of the murder in aid of racketeering of Tonya Jones
17 Spence. And again, because the indictment charges and the
18 government has argued that Ms. Jones Spence was murdered in the
19 course of a robbery, you will also have to tell us whether felony
20 murder, in addition to premeditated murder or second degree
21 murder, was involved.

22 And again, as I just instructed you on these
23 substantive counts as opposed to Counts One and Eight, which are
24 the conspiracy counts, the theories of liability are that the
25 defendants each committed these acts themselves, that the

1 defendants aided and abetted these acts, and that the defendants
2 were members of a conspiracy, and that these acts were carried
3 out in furtherance of and in pursuit of the conspiracy during the
4 conspiracy.

5 Count Eight is the drug conspiracy, the narcotics
6 conspiracy. And each of the defendants has a separate inquiry
7 here. And you will see a number of items with respect to Count
8 Eight. To begin with, again, Mr. Mitchell is listed first
9 because all four defendants are charged in Count Eight, which of
10 course you will recall is also Racketeering Act Nine.

11 So the first question is, How do you find Mr. Mitchell,
12 guilty or not guilty, of the narcotics conspiracy? And then
13 Question Two says, If you find Mr. Mitchell guilty, as I've
14 instructed you, you must determine whether the conspiracy for
15 which you find Mr. Mitchell guilty involved crack cocaine.
16 That's Question Two. And you will answer yes or no.

17 If you answer that question yes, then it will be
18 necessary for you to tell us what amount of crack cocaine did the
19 conspiracy distribute and/or possess with the intent to
20 distribute. And there are three possibilities there. You can
21 check none, one, two, or all three. So the possibilities are
22 less than 5 grams, 5 grams to less than 50 grams, or 50 grams or
23 more.

24 Then further, still on Count Eight, if you find Mr.
25 Mitchell guilty of the narcotics conspiracy, you will have to

1 tell us whether you find that that conspiracy involved powder
2 cocaine separately from crack cocaine. And you will answer yes
3 or no, that the conspiracy of which, of which Mr. Mitchell was a
4 part, if he is, did or did not involve powder cocaine.

5 If you say yes, that conspiracy involved powder
6 cocaine, then you will tell us the quantities if you can, of what
7 quantities of powder cocaine that conspiracy of which Mr.
8 Mitchell you say was a part beyond a reasonable doubt involved.

9 And there, as you can see, you have three
10 possibilities -- less than 500 grams of powder cocaine, more than
11 500 grams but less than 5 kilograms, or 5 kilograms or more of
12 cocaine, powder cocaine. And you will give us those answers and
13 then you will move on to consider whether the conspiracy of which
14 Mr. Mitchell was a part you find beyond a reasonable doubt
15 involved heroin. And you will tell us yes or no.

16 Now, with the heroin you won't have to tell us the
17 amounts. But with the crack and the powder you will have to tell
18 us what amounts you unanimously find were involved. Heroin is
19 just yes or no.

20 And then finally, was that conspiracy of which you find
21 Mr. Mitchell guilty, was that conspiracy one that had the
22 objective of possessing or, possessing with the intent to
23 distribute -- excuse me -- distributing or, conspiracy to
24 distribute and/or to possess with the intent to distribute
25 marijuana? Again, with respect to the marijuana, you won't have

1 to give us the amount. Simply yes or no, there was marijuana
2 involved in that conspiracy.

3 So as you can see, you've got a whole series of guilty
4 or not guilty questions on Mr. Mitchell under Count Eight and
5 then a subsidiary series of questions involving the quantity and
6 the type of narcotics.

7 And then you can, as you can see on Page 113, which is
8 a reproduction of the verdict sheet, you go on to Mr. Harris.
9 And the exact same series of questions will appear under Count
10 Eight for Mr. Harris. And then the exact same series of
11 questions will appear under Count Eight for Mr. Martin. And the
12 exact same series of questions will appear under Count Eight for
13 Mr. Gardner.

14 So for each of the four defendants charged in Count
15 Eight, the narcotics conspiracy, you will decide whether they're
16 guilty or not, and then you will tell us what type of drug was
17 involved. And if crack and powder cocaine were involved in each
18 instance, you will tell us the amounts that you find beyond a
19 reasonable doubt were involved in those conspiracies.

20 Okay. Count Nine begins the firearm counts, the 924(c)
21 counts. And again, you will remember, as I instructed you, that
22 Counts 9 and 10 and 12 and 15 are the 924(c) counts. And your
23 consideration of those counts depend on the outcome of other
24 counts. And I'll explain it to you in plain language. I
25 explained it to you in sort of legalese. Let me explain it to

1 you now in plain language.

2 You will notice on the verdict sheet, Count Nine, How
3 do you find the defendant, Willie Mitchell -- I'm on Page 116 --
4 as to the charge of possessing a firearm in furtherance of a
5 crime of violence and a drug conspiracy in Count Nine of the
6 indictment? Not guilty/guilty. You will make your decision. If
7 you say guilty, then you're going to tell us whether your basis
8 of guilty is either crime of violence or drug conspiracy.

9 If you don't find Mr. Mitchell guilty of the underlying
10 charge in Count Nine, and I'll tell you what that is in a second,
11 if you don't find Mr. Mitchell guilty of Count Two or Count
12 Eight, then you don't even need to consider Count Nine. And the
13 reason for that is, as you can see, Count Nine is possession of a
14 firearm during and in furtherance of one of the other two crimes,
15 either the crime of violence or the drug conspiracy. So if you
16 find Mr. Mitchell not guilty of Count Two, which is the crime of
17 violence which is incorporated into Count Nine, if you say the
18 government hasn't proven beyond a reasonable doubt that Mr.
19 Mitchell was involved in the murder of Oliver McCaffity, and if
20 you further say that the government hasn't proven beyond a
21 reasonable doubt that Mr. Mitchell was involved in the narcotics
22 conspiracy charged in Count Eight, then there will be no
23 predicate crimes during and in furtherance of which Mr. Mitchell
24 could have possessed a firearm.

25 So my instructions cover this. And I'm building on it

1 now to make it as clear as I can.

2 So if you say not guilty to crime of violence and not
3 guilty of drug conspiracy, there would be no basis for finding
4 Mr. Mitchell guilty of Count Nine, possession of a firearm.

5 On the other hand, it doesn't take both. If you find
6 Mr. Mitchell guilty of the murder of Oliver McCaffity, Count Two,
7 then that by itself would be sufficient for you to find him
8 guilty, if you so determine, of Count Nine.

9 But even if you find Mr. Mitchell not guilty of Count
10 Two but you find him guilty of Count Eight, the narcotics
11 conspiracy, then Mr. Mitchell's involvement in the narcotics
12 conspiracy would be enough, if you so find, to find him guilty of
13 Count Nine, possession of the firearm.

14 So in other words, the possession in furtherance of the
15 crime in Count 9 doesn't have to be in furtherance of both crimes
16 in Count 9. Can be either. It could be both if you so determine
17 but it could be either. But if it's neither, then you can't
18 convict under Count 9.

19 And so the same considerations apply to Mr. Harris in
20 Count 9, because Mr. Mitchell and Mr. Harris are the only ones
21 charged in Count 9.

22 So the same thing is true for Mr. Mitchell and Mr.
23 Harris under Count 10. Count 10 relates to the murder of Lisa
24 Brown, which is Count 3 of indictment, or actually Count 4.

25 So same thing. Count 10 says Mr. Mitchell and Mr.

1 Harris possessed a firearm in furtherance of two separate crimes,
2 the narcotics conspiracy in Count 8 and the Lisa Brown murder,
3 which is charged in Count 4. What I just described as to Count 9
4 applies equally to Count 10.

5 If you find either Mr. Mitchell and/or Mr. Harris
6 guilty of Count Four, the Lisa Brown murder, then you must
7 consider Count Ten. If, on the other hand, you find Mr. Mitchell
8 and/or Mr. Harris not guilty of Count Eight and not guilty of
9 Count Four, then you may not convict under Count Ten.

10 Likewise, the same thing applies to Count 12, which
11 involves all four defendants, with respect to Darryl Wyche, Count
12 15, which names Mr. Gardner only. Okay.

13 So as you go through these, you will make a decision as
14 to whether there was possession -- I'm talking now about Counts
15 9, 10, 12 and 15. 9, 10, 12 and 15. As you go through them, if
16 you find not guilty as to both of the underlying crime of
17 violence and/or the narcotics conspiracy, you may not convict on
18 any of those counts. On the other hand, if you find guilty
19 either as to the narcotics conspiracy or the underlying crime of
20 violence, which in each instance is a murder, then you will
21 consider those counts, 9, 10, and so on.

22 Okay. Next are the causing a death in the course of
23 the 924(c) violations. And the first one of those is Count 11.
24 And Count 11 charges Mr. Mitchell and Mr. Harris only with
25 causing the death of Oliver McCaffity in connection with their

1 possession of a firearm in furtherance of the death of Mr.
2 McCaffity.

3 Now, there's obviously a lot of overlap but you're
4 going to have to go through these and consider each count
5 individually. I hope my instructions will help you do that.

6 So Count 11 asks you, if you look at the verdict sheet
7 reproduced on Page 177, Count 11 says, How do you find the
8 defendant, Willie Mitchell, as to the charge of possessing a
9 firearm resulting in death in Count 11 of the indictment?

10 Count 11 of the indictment says -- I'm paraphrasing, of
11 course -- that in connection with the death of Lisa Brown, Mr.
12 Mitchell and Mr. Harris caused her death. Caused the death. And
13 that -- I'm sorry. In connection with the death of Oliver
14 McCaffity. A couple of you corrected me, that's very good, as
15 did, I think, a couple counsel.

16 So Count 11 says, as I explained to you before, that
17 Mr. Mitchell and Mr. Harris murdered, in the course of murdering
18 Mr. McCaffity, caused the death of Lisa Brown. And further, that
19 in causing the death of Lisa Brown which, according to Count 11,
20 was caused during the murder of Oliver McCaffity, Mr. Mitchell
21 and Mr. Harris committed either deliberate premeditated murder of
22 Lisa Brown or, in the alternative, that Lisa Brown's death was a
23 felony murder because, according to the indictment and the
24 government's arguments, Lisa Brown's death occurred, was caused
25 in the course of the murder of Oliver McCaffity.

1 Kind of strange. If you're thinking that, I agree with
2 you. It's kind of strange to say that a person was killed in the
3 course of somebody else's killing. But this is the language of
4 the statute which you must apply under the evidence and my
5 instructions as I've given them to you.

6 So that's Count 11. Relates to the death of Lisa Brown
7 and it's framed under 942(j) that talks about and is concerned
8 with causing the death of a person in the course of another
9 offense. The other offense with respect to Lisa Brown is the
10 possession of a firearm in carrying out a crime of violence
11 against Oliver McCaffity. So that's Count 11.

12 The analogous counts relating to the Wyches and Ms.
13 Jones Spence would be Count 13, Count 14. Count 13 being a count
14 that names all four defendants and charges that Darryl Wyche's
15 death was caused by the offense which is charged in Count 12.
16 Count 12 is the possession of a firearm in the course of either
17 the drug trafficking crime, Count 8, or the murders of Darryl and
18 Anthony Wyche in aid of racketeering.

19 So the claim here is that, in Count 13, that Darryl
20 Wyche was killed in the course of the offense charged in Count
21 12. And again, you will see that it could be, based on your
22 determination, deliberate, willful and malicious, premeditated
23 murder or, in the alternative, in the perpetration of robbery.
24 Because you remember the government argues and the indictment
25 charges that Darryl Wyche was intended to be robbed and that his

1 death came about in the course of a robbery.

2 So you will let us know whether you find both willful,
3 deliberate and malicious and premeditated murder and/or that the
4 murder occurred, the death occurred in the course of the
5 perpetration of a robbery when you answer the questions related
6 to Count 13.

7 Same thing, Count 14, in which all four defendants are
8 named and relates to the death of Anthony Wyche.

9 Next, on Page 121 and the next in line is Count 15,
10 which deals with possession of a firearm. I've already been over
11 that. That's Mr. Gardner, with respect to the possession of the
12 firearm in furtherance of the offense charged in Count 7 or the
13 drug conspiracy, Count 8. And Count 16 is the charge against Mr.
14 Gardner for causing the death of Tonya Jones Spence in the
15 commission of the offense committed as charged in Count 15, the
16 possession of the firearm.

17 And then we come to the last three counts, Counts 17,
18 18 and 19. In Count 17, only Mr. Gardner is charged with
19 possession, prohibited possession of a firearm. In Count 18,
20 prohibited possession of a firearm by Mr. Shelton. Obvious,
21 different dates; Mr. Harris, February, 2004; Mr. Gardner in Count
22 17 in June of 2002.

23 And then finally, Count 19, Mr. Harris is charged for
24 witness retaliation.

25 So that once you have completed all of your questions

1 and your foreperson has filled out the verdict sheet, your
2 verdict sheet will be used to deliver your verdict here in open
3 court. As I say, you are free to go about your work in any order
4 you choose with respect to the counts of the indictment. The
5 fact that they are listed on the verdict sheet in numerical order
6 does not in any way bind you as to how you go about your
7 business.

8 I'm at the very end, ladies and gentlemen.

9 Your verdicts must be unanimous in a special sense.

10 And we've been over this.

11 Count One of the indictment charges racketeering
12 conspiracy. And I have explained to you that in order to find a
13 defendant guilty of this offense, you must find that at least two
14 of the nine racketeering acts charged in the indictment were, or
15 were intended to be, committed as part of the conspiracy. I have
16 explained that the government does not have to prove that any
17 defendant committed or agreed to commit any of these acts;
18 however, all 12 of you must agree on the two racketeering acts
19 committed or intended to be committed as part of the conspiracy.

20 As the verdict sheet requires, you will be asked to
21 indicate which racketeering acts of the nine you unanimously
22 find.

23 Similarly, Counts 2, 4, 5, 6 and 7 of the indictment
24 charge the defendants with premeditated murder and second degree
25 murder. In addition, Count 5, 5, 6 and 7 charge felony murder as

1 well.

2 Counts 11, 13, 14 and 16 charge possession of a firearm
3 resulting in death, both as premeditated murders and as felony
4 murders. In order to convict a defendant on these murder counts,
5 all 12 of you must agree on at least one of the specific types of
6 murder in each count that each charged defendant committed. As
7 you saw on the verdict sheet, you are being asked to indicate
8 which one or ones of the types of murder you unanimously find
9 were committed.

10 Counts 9, 10, 12, and 15 charge possession of a firearm
11 both in furtherance of a crime of violence and in furtherance of
12 the drug conspiracy, as I've been over with you. All 12 jurors
13 must agree on the specific object the defendant was trying to
14 accomplish in those counts. You need only find one of the two
15 objects in order to find the defendant guilty of the counts, but
16 you must be unanimous as to which one or ones you find. As the
17 verdict sheet requires, you are being asked to indicate which
18 objects you unanimously find.

19 Thus, in both these specific instances and more
20 generally, your verdict, ladies and gentlemen, must be unanimous.
21 It must therefore represent the considered judgment of each
22 juror.

23 When you go back to the jury room to begin your
24 deliberations, there may well be some disagreement among you as
25 to the weight or significance of the evidence or as to what the

1 ultimate verdict should be. That is not at all unusual and it
2 should not concern you. Obviously, deliberation requires that
3 there be a full discussion of any differences among you and you
4 should discuss your differences with an open mind.

5 Although you should make every reasonable effort to
6 reach a verdict, if you cannot ultimately agree with your fellow
7 jurors, regardless of how many may disagree with you, it is your
8 duty to stick to your position.

9 Consult with one another, express your own views, and
10 listen to the opinions of your fellow jurors. Do not hesitate to
11 re-examine your own view but do not change your opinion unless
12 you come to believe it is wrong.

13 Never refuse to change your position out of
14 stubbornness or because you are tired of listening to your fellow
15 jurors, but do not surrender your honest beliefs about the weight
16 or effect of evidence because your fellow jurors disagree with
17 you, because you want to get it over with, or for the sole
18 purpose of returning a unanimous verdict.

19 You are the impartial judges of the facts. Your sole
20 interest is to return a just verdict by applying the law to the
21 facts you find have been proven.

22 Well, I have to say to our alternate jurors that it
23 does appear that we have a full complement of jurors who will be
24 able to render a verdict in this case. However, as I indicated
25 to you on an earlier occasion, because we can't be certain, of

1 course, whether any of the regular jurors might have a family
2 emergency or some personal circumstance that might prevent him or
3 her from continuing through to the end of deliberations, I'm
4 going to instruct you, though you're going to be excused right
5 now, I'm going to instruct you to have no discussion whatsoever
6 about the case. Continue to adhere to all of my instructions as
7 you go about your normal activities.

8 I'm sure your friends and family will think you're nuts
9 because I'm sure you've told them that you'll be able to talk
10 about the case once you're finished. But what I'm instructing
11 you to tell them is that although you are going home and you
12 won't be coming in any more unless we call you, the fact is you
13 are still on duty. You continue to be our backup in the event
14 that one of the regular jurors can't serve.

15 So please adhere to that instruction. Please leave
16 your note pads and your copy of the instructions on your chairs.
17 They will be secured by Ms. Arrington. And you are now free to
18 go into the jury room to retrieve any of your personal property
19 and to depart the courthouse.

20 We thank you very much for your service. And no matter
21 what happens here, I can assure you that you haven't seen the
22 last of us and we will be, I'm talking now about me and Ms.
23 Arrington, we will be in touch with you about progress in the
24 case. And we will certainly let you know immediately when the
25 jury has reached a verdict and you are no longer on duty. But

1 we'll be in touch with you. Thank you very much for your
2 conscientious service.

3 If you would now go into the jury room, retrieve your
4 personal belongings, and you are excused.

5 I'm sorry to do it this way but, in fact, let me just
6 explain, under the law, under the law -- ma'am, if you could just
7 wait one second. I know you're anxious to get out of here. I
8 would love for you to have a more, a more appropriate farewell
9 from the rest of the jurors but the fact of the matter is, at
10 this point it wouldn't be appropriate for you to be in the jury
11 room with the other jurors. And I have a few additional things I
12 need to say to them. That's why I'm excusing you. I regret
13 that. But you will have another opportunity to see them, I
14 assure you.

15 Okay? Thank you very much. Have a wonderful weekend.

16 (Alternates leave the courtroom.)

17 THE COURT: Ladies and gentlemen, so it's on your
18 shoulders now. I have a few additional things to say. We have
19 all of the exhibits absolutely ready to go, with maybe one
20 exception. But I think they're all ready to go right there on
21 that cart. As soon as you go in there, if you want to start your
22 deliberations, we're going to send them in.

23 The audio recordings and several of the videos that
24 were part of the evidence have been reproduced on a single DVD or
25 CD, and we're going to send in to you a laptop computer. I'm

1 sure among the jury probably all 12 of you, but at least half of
2 you, are comfortable with a computer. So to the extent you want
3 to listen to any of the audiotapes you heard during the trial,
4 the statements that are in evidence, and other digital evidence,
5 most of it's going to be on that 1 DVD, which you can just -- in
6 fact, let me back up.

7 They've actually been copied, I think, most of them, on
8 the hard drive of the laptop that we're going to send in. So
9 those of you with some computer savvy, I'm sure you won't have
10 any problem. And I'm sure it's been identified on the desk top
11 or the laptop. You can pull up any of these audio or, in one
12 instance, I think, a video of the Stop Snitching excerpt is also
13 on that hard drive. Some of the other digital evidence is in a
14 separate CD.

15 For example, I'm told that the video from the marshal's
16 lockup, the incident involving Mr. Harris, has not been
17 reproduced, is that right? Or was?

18 MR. HARDING: It could not be done on the laptop. So
19 it's available as the Exhibit AH-1 and we have a DVD player.

20 THE COURT: That's right. Thank you. Thank you, Mr.
21 Harding. So in addition to the laptop, we have a DVD player,
22 which will be needed to play the tape from the marshal's lockup
23 related to Count 19 and Mr. Harris's encounter with Mr. Hayes.

24 So we're sending in some electronics for your use. I
25 caution you not to make any use of -- I think we're also sending

1 in a cassette because Ms. Damita Green's statement to the police
2 was only available on one of the old style cassettes and we have
3 a cassette player on the cart if you want to listen to that.
4 That's also available to you.

5 So I think we've now covered the base. There are one
6 or two other perhaps independent CD's that, that have evidence
7 that you may want to look at.

8 So I think we're giving you everything. Of course,
9 we're not sending in the weapons. We're not sending in any
10 narcotics. We're not sending in the knives. All right? But you
11 should have everything else.

12 We're going to send in the easel as well as the large
13 placards that were used during trial, the maps and such.

14 I would caution you to take special care in your
15 handling of the exhibits, which I know you will, anyway. As you
16 could see, some of those documents, papers and things, are rather
17 fragile. And counsel have worked very hard to put them in quite
18 an orderly fashion. They're all in those containers, separately
19 marked. And each container has a separate exhibit list of what's
20 in the container. And in addition, I believe there's also a
21 single list of all the government's exhibits and single list,
22 that should be stapled together, I think, of all the defense
23 exhibits.

24 So I say all of this just to caution you to make your
25 job easier, frankly, that while you certainly are free to handle

1 the exhibits and examine them as you wish, I would just urge you
2 to take extra care to make sure that when you take something out,
3 you mark where it came from so that perhaps you can put it back.
4 And that will make it easier for you to manage the exhibits to
5 the extent you wish to look at the exhibits.

6 We're sending in legal pads. There will be markers and
7 paper clips and staples and anything else you might need during
8 your deliberations. So those will be in with you.

9 The first thing you're going to want to do when you get
10 in there, and maybe the only thing you want to do today, is
11 select a foreperson. Your foreperson gets no extra pay. Your
12 foreperson will, in effect, preside over your deliberations,
13 maintain a little order. And your foreperson will be your
14 spokesperson here in the courtroom when you deliver your verdict.

15 Now, let me explain to you quickly how you deliver your
16 verdict. First of all, you're now free to take your notes and
17 your copies of the instructions into the jury room with you. I
18 hope that you won't have any questions about the instructions,
19 but you may. You have copies there with you.

20 But in any event, if you have any questions for us
21 about anything during your deliberations, it is critically
22 important that you communicate with us only in writing at all
23 times. So that if you have a question, there will be a court
24 security officer and/or Ms. Arrington here in the courtroom at
25 all times during your deliberations. And if you need something,

1 you need only knock on the door and someone will respond
2 immediately.

3 If you have a question for us, write out the question,
4 knock on the door, hand out the question, and it will be brought
5 to my attention immediately.

6 What I will then do is I will confer with counsel. And
7 my preference and what I'll try to do is, if you send out a
8 question, I will try to send you as quickly as I can a written
9 response to your question.

10 There may be some questions for some reason or another
11 that I can only answer here in the courtroom. And so if you ask
12 a question that I need to answer here in the courtroom, I ask
13 your patience because we are all going to have to reassemble here
14 in the courtroom. All of you will be brought back into the
15 courtroom and I will answer your question on the record in the
16 presence of all of us. But to the extent I can do so, I will
17 answer any of your questions by sending in a written response
18 after I've conferred with counsel.

19 Now, your verdict. Once you have reached a verdict and
20 answered all those questions on the verdict sheet, your
21 foreperson will simply send out a note, we have reached a
22 verdict. Do not send out the verdict sheet, don't send out any
23 evidence, simply a note, We have reached a verdict.

24 We will promptly reassemble here in the courtroom and
25 you all will come back into the jury box. Ms. Arrington will

1 call the role and each of you will answer present or here. We
2 will record the fact that all twelve jurors are present. And
3 then the jury will be asked, have you agreed upon your verdict?
4 And presumably all of you will answer in unison, yes, we have.
5 And Ms. Arrington will ask, who shall speak for you? And you all
6 will say, Our foreperson.

7 And the foreperson will then stand and Ms. Arrington
8 will ask for the verdict sheet, which she will then bring to me.
9 And I will check it for completeness. And then I will give it
10 back to her and she'll bring it back to the foreperson.

11 And then the foreperson, while standing, will answer
12 the questions from the verdict sheet that will be read out loud.
13 And the foreperson will answer out loud each of the items in
14 questions listed on the verdict sheet for the record.

15 After that is done, the Court will have what's called a
16 poll of the jury, in which each of you individually will be asked
17 to affirm or deny that the verdict that has been delivered by
18 your foreperson is your own personal verdict with which you
19 agree. And that will conclude your service.

20 So let me excuse you now. And it's 4:00, Friday.
21 Whether you choose to stay for an hour or stay for an hour and a
22 half or stay for 15 minutes or get out of here right away is
23 entirely up to you.

24 So I'm going to ask you to go into the jury room, speak
25 among yourselves. And if you would, as quickly as you can, send

1 out a note telling me what you want to do today. Whether you
2 want to leave now and come back Monday morning or whether you
3 want to stay for an hour or so and you want the exhibits brought
4 in. Just let me know and whatever you want to do will be fine
5 with me.

6 Okay. The jury is excused to begin its deliberations.

7 (Jury exits the courtroom at 4:03 p.m.)

8 THE COURT: Counsel, as I said, all of your earlier
9 objections, requests, exceptions, are expressly incorporated into
10 the record at this point and you need not do anything more to
11 preserve your record. If there are any additional requests or
12 exceptions that have just occurred to you, I'm happy to take them
13 now. Mr. Harding?

14 MR. HARDING: Yes. Just very briefly, Your Honor.
15 Could Your Honor advise the jurors that if they want to listen to
16 any of the other rap songs other than Track 11, those are not
17 available to them except by coming back to the courtroom?

18 THE COURT: Okay. I forgot to do that. Thank you, Mr.
19 Harding.

20 MR. HARDING: Also, when you were instructing on Count
21 18, you said it related to the gun that was recovered at the
22 arrest of Mr. Harris in February of '04. It was actually in
23 January of '04. That's very minor.

24 Around Page 91, Your Honor gave a felony murder
25 instruction. And I never, I didn't, I didn't see it. Maybe Your

1 Honor e-mailed us the final version of your instructions but I
2 haven't been sufficiently in touch with my computer to have
3 printed it out. I thought Your Honor, when you gave the
4 instruction in court, for roughly the second element you said
5 that the defendant had to have committed the murder or something
6 like that, when in fact it should be, and maybe it is this in the
7 written form, I haven't seen it, a defendant must have committed
8 the murder and the --

9 THE COURT: Oh.

10 MR. HARDING: You see what I'm saying?

11 THE COURT: Yeah, I do. I appreciate that. There are
12 all kinds of those kinds -- there are lots of those kinds of
13 inherent contradictions, unfortunately, Mr. Harding, because, I
14 mean, when you use a Pinkerton theory, that contradicts a lot of
15 stuff. When you use an aiding and abetting theory, it
16 contradicts a lot of stuff. My experience has been the jury
17 usually figures it out. But to say that the defendant has to be
18 present, as some of my instructions did, contradicts the
19 Pinkerton theory on every count.

20 MR. HARDING: Aiding and abetting.

21 THE COURT: Yeah. I think, I think it's okay. I think
22 it's okay. And if I said "committed the murder", certainly at
23 one point, because I was intrigued, I mean, I've never seen, I've
24 never seen a felony murder based on another murder. But it's a
25 correct statement of the law. I mean, your theory is perfectly

1 right on. But the idea that Lisa Brown's death was a felony
2 murder is almost absurd. I mean, she got shot in the head from
3 the back of a car. The idea that that's a felony murder is, it's
4 certainly counter-intuitive. I'll put it that way.

5 Yes, Mr. Martin.

6 MR. MARTIN: Yes, Your Honor. I just, I know we
7 covered this earlier and we have our objections based upon that.
8 But when you were instructing the jury, and especially when you
9 got to the verdict form, you were, when you were around Count 11,
10 in that area, where we were bouncing back and forth, you
11 repeatedly said, and then you corrected it one time with one of
12 the other counts, you repeatedly said all they have to find is
13 the murder. Then on Count 13 you said the murder in aid of
14 racketeering.

15 And I'm concerned that this jury's going to think all
16 they have to find is that they committed one of those murders in
17 Counts Two, Three Or Four and that's the end of it.

18 THE COURT: You mean without the elements of
19 maintaining?

20 MR. MARTIN: Without the racketeering element. Yes,
21 Your Honor. It would give them an easy way out and it wouldn't
22 be right. And we would have corrected that if you had given our
23 verdict form that said, Do you find the enterprise, Do you find
24 the conspiracy? Because if they said no and then they went on to
25 find him guilty, we would know that something went bad in there.

1 That's my objection.

2 THE COURT: I appreciate that, Mr. Martin. I don't
3 think that the jury for one second's going to think that mere
4 murder without the 1959 elements are sufficient.

5 MR. MARTIN: If they do, then they think we were lying
6 to them yesterday when we talked to them.

7 THE COURT: Okay. The jury has decided that Number 12
8 will be the foreperson. Certainly a surprise to me. We will
9 reconvene at 9:30 a.m. Monday. We request to leave now. And can
10 you please clarify the status of our note pads, exhibits? Will
11 they be stored in the jury room? And the answer, of course, is
12 no. Right?

13 Where do you store them when you've got a whole cart?
14 Oh, you can get them behind there? Okay. Bring the jury out,
15 please. Just one moment, Belinda.

16 So here's what I do, counsel, with your indulgence. I
17 will have the jury, I will tell the jury to be here no later than
18 9:30, that the foreperson's been identified. And under the
19 foreperson's leadership, they are not to begin deliberations and
20 the exhibits, exhibits and note pads and instructions will not be
21 sent in until after all 12 jurors are here and we're so notified.
22 And then they can, they can proceed.

23 Anybody have any objection to me permitting them to
24 leave for lunch for an hour at 12:30 on Monday, without
25 reassembling?

1 (No response.)

2 THE COURT: Okay. So we'll do it that way.

3 And I will tell them that my normal practice is at
4 5:00, normally it's 5:30 but for this case I'll do five, if I
5 haven't heard from them by five, I typically check with them to
6 see whether they want to continue working or want to call it a
7 day. So I'll tell them that so they know.

8 Did you need, did I need to hear you, Mr. Crowe, before
9 they come back?

10 MR. CROWE: Yes. I will be very quick on this, Your
11 Honor. We made a special request, as you know, for an
12 instruction that in order to convict any defendant of the RICO
13 conspiracy, they had to find that that defendant had agreed that
14 either he or another defendant would commit, he or another
15 coconspirator commit two racketeering acts.

16 I think that instruction is especially necessary now.
17 Yesterday I believe I heard Mr. Harding argue to the jury that it
18 did not even have to find the defendant even knew about two
19 racketeering acts, and then read the instruction which the Court
20 gave.

21 And I heard the Court indicate a couple, I think on
22 about three occasions today, that all that they had to do was to
23 find that two racketeering acts were committed or intended to be
24 committed without saying that each defendant had to have done
25 that.

Beyond that, we obviously renew all the other objections, adopt everybody else's, and particularly the additional special verdicts which Mr. Flannery submitted yesterday.

THE COURT: Thank you, Mr. Crowe. By the way, Mr. Flannery, in the end I think you were absolutely right that I hadn't included the statement that Shakedown is not the enterprise. I threw that in ad hoc, because I didn't see it ever.

MR. FLANNERY: It was in your, I think I it was in your final draft.

THE COURT: You think it was?

MR. FLANNERY: I believe so.

THE COURT: Okay.

MR. FLANNERY: The one that you e-mailed like 9:00 at night. The last one that you e-mailed us.

THE COURT: I don't remember seeing it in here.

All right. All right. We'll get the jury out and out.

MR. HARDING: Your Honor, I prepared a list of things on the laptop.

THE COURT: Great. Thank you.

MR. HARDING: For the jury's benefit. I have several more copies.

(Jury enters the courtroom.)

THE COURT: Ladies and gentlemen, good afternoon again.

1 We're very pleased that you're so decisive.

2 You're going to be excused in just a minute or two.

3 I'm going to answer your questions.

4 First of all, the exhibits, your notes, your copies of
5 the instructions, the copy of the indictment, and the jury
6 verdict form will all be locked up whenever you're not here, but
7 not in the jury room. In a secure location near the courthouse,
8 near the courtroom.

9 And so when you're ready to begin your deliberations,
10 everything will be made available to you immediately.

11 You've indicated you wish to call it a day and we don't
12 fault you one bit. In fact, we think you made your first wise
13 decision.

14 You've indicated you'd like to resume at 9:30 on Monday
15 and that's perfectly fine. As I told you the other day, if you
16 happen to get here early, 9:15, 9:10, 9:00, if all 12 of you are
17 there, you may begin your deliberations whenever you're ready.

18 Once all 12 people are present, Mr. Foreman, simply
19 knock on the door, hand out a note, We're all here, we're ready
20 to go. And within a minute or so, I assure you the exhibits and
21 all the other material will be provided to you, including the
22 easel and so forth.

23 We will not resume here in the courtroom on Monday. So
24 you will come in, you will go straight to the jury room. And
25 when all of you are present, as I say, you knock on the door and

1 all the stuff will be brought in to you.

2 I'm going to tell you now, so that we don't have to
3 bother you and reconvene on Monday, with your permission, I'm
4 going to say at 12:30, you will be released for lunch. I will
5 instruct you to keep lunch at no more than an hour. So at 12:30,
6 knock on the door. The court security officer will be here, let
7 you out, lock up the jury room and so forth. Ms. Arrington will
8 be here for sure. Go have your lunch.

9 But whenever you're out of the jury room, deliberations
10 must cease. This is very important.

11 So if two of you go off to lunch or four of you go off
12 to lunch, six of you go off to lunch, even if eleven of you go
13 off for lunch, there can be no deliberations unless and until all
14 twelve jurors are present in the jury room.

15 Okay. So 12:30 to 1:30 on Monday will be lunch. And
16 as I've said to you before, if you have a question, please write
17 out your question, knock on the door, hand out your question.
18 We'll get back to you.

19 My practice for this case, at 5:00 on Monday, if we
20 haven't heard from you before then, my practice is to bring
21 everybody back to the courtroom, bring the jury out, and ask you
22 whether you wish to continue working through, into and through
23 the evening or whether you would rather call it a day. If you
24 want to call it a day before 5:00, you just let me know. But if
25 I haven't heard from you by five, you can expect that shortly

1 after that I'll be bringing you back into the courtroom to ask
2 you where you, where you, not where you stand in your
3 deliberations, but whether you want to continue deliberations.

4 If you choose to work late Monday night, that is
5 acceptable. We can certainly provide anyone who wants it with an
6 escort to your car. It might be a good idea, in case you all
7 decide to work late Monday, not to park in a garage that closes
8 at 6:00 or something. I don't suppose there are any of those
9 around here. But occasionally, there's a garage that has an
10 early closing hour. So you want to doublecheck that when you
11 come in on Monday.

12 I failed to tell you a couple things, and then I'll let
13 you go. First of all, you should never, in any written
14 communication that you send out to us, indicate the status of
15 your deliberations, unless it's absolutely critical that you do
16 so. But never indicate, you know, we voted on these counts but
17 not these counts, or we reached agreement on these counts. And
18 certainly never indicate, if you have voted and not reached a
19 unanimous verdict as to a particular defendant or particular
20 count, you should not indicate in any of your written
21 communications what the vote might be. All right?

22 And I failed to mention that there remains several
23 excerpts from some of the rap songs -- you'll remember the name
24 of the CD is Pure Shit -- there were several excerpts which the
25 government used during the trial. Those are not on the hard

1 drive of the laptop or on the CD. Track 11 of that Pure Shit CD
2 is on the laptop. So if you wanted to listen to that, you can.
3 But other excerpts, we haven't been able to put on the laptop.
4 So if you need to listen to any of that, we'll have to bring you
5 back into the courtroom and play those here in the courtroom.

6 But pretty much everything else should be either on the
7 hard drive of the laptop or on a separate CD or DVD or cassette
8 tape, and clearly marked. And you will be able to find that.

9 Indeed, Mr. Harding has now given me, with the
10 agreement of all counsel, a list of all the items on the laptop,
11 which will also be sent in to you. So with the exhibit numbers
12 and the description of the items, you should be able to find on
13 the hard drive of that laptop which we're going to send in, which
14 is a court laptop, you will be able to find the digital evidence
15 that you want to pay attention to.

16 So with that, we will not see you Monday morning but we
17 wish you well over the weekend. Needless to say, as important as
18 my general instructions have been up until now, they take on
19 truly extra emphasis and importance.

20 During this weekend recess, you are to have no
21 discussion with anybody. Don't even call each other. As you
22 understand, that wouldn't be appropriate. Don't get together for
23 lunch tomorrow, two or three or four of you. Don't work on the
24 case. Put it out of your mind. Conduct no investigation. Avoid
25 media reports. Do not permit anyone to talk to you about the

1 case. Do not discuss the case with anyone. Continue to adhere
2 to all of my instructions.

3 Enjoy your weekend. We thank you for your continued
4 service in this case. It's extraordinary service. It truly is.
5 Each and every one of you has provided extraordinary service.
6 And we appreciate your willingness and your ability to continue
7 to do so.

8 So Monday morning, no later than 9:30 or no later than
9 when all 12 of you arrive, knock on the door, hand out a note.
10 Ms. Arrington will be here, waiting to hear from you. And she'll
11 send in all your note pads, all the exhibits, the easel, writing
12 implement, legal pads, and laptop so that you can get to work.

13 Thank you very much, ladies and gentlemen. Enjoy your
14 weekend. The jury's excused.

15 (Jury exits the courtroom at 4:20 p.m.)

16 THE COURT: Counsel, thank you. All of you, each and
17 every one of you, did extraordinary work in this case. And I
18 appreciate it.

19 I salute the government for your efforts and your hard
20 work, and I certainly salute the lawyers on this side for service
21 way, way above and way, way beyond the call of duty. Really
22 extraordinary.

23 Thank you very much. We're in recess.

24 (Conclusion of Proceedings at 4:20 p.m.)

REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on November 21, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my
signature this _____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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